

IN THE SPECIAL COURT FOR NIA CASES, ERNAKULAM, KERALA

Present:-

Shri. P.Krishna Kumar, Judge, Special Court for NIA Cases, Ernakulam
Monday the 25th day of November, 2019/4th Agrahayana, 1941.

SESSIONS CASE NO. 1/2017/NIA

(R.C. No. 5/2016/NIA/KOC)

Complainant : Union of India represented by National
Investigation Agency, Kochi, Ernakulam.

**By Adv. Arjun Ambalapatta,
Public Prosecutor, NIA**

- Name of the Accused :**
- A1.** Shri. Manseed @ Omar Al Hindi @ Muthukka @ Hudhud @ Mansi Buraaq @ Jamaltvm, S/o. Mehmood, aged 33 years, Madeena Mahal (H), Aniyaram, Chockli, Thalassery, Kannur, Kerala.
 - A2.** Shri. Swalih Mohammed @ Yunus @ Yusuf @ Yusuf Bhai @ Bilal @ Abu Hasna @ Yunus Salim, S/o. Taha Mohammed, aged 29 years, Ambalath House, Venganelloor, Chelad, Thrissur, Kerala.
 - A3.** Shri. Rashid Ali @ Abu Basheer @ Rashid @ Bucha @ Dalapati @ Ameer @ Abdul Azeez @ Abu Safeer, S/o. Mohammadali, aged 27 years, House No. 6, GM Nagar, Kottaiputhur, Coimbatore, Tamil Nadu.
 - A4.** Shri. Ramshad.N.K @ Amu @ Abu Muad @ Adam Ahammed @ Musab Ibn Umair, S/o. Ashraf.N.K., aged 27 years, Nangeelankandy (H), Kuttiadi, Kozhikode, Kerala.
 - A5.** Shri. Safvan @ Rayyan @ 8 GB @ Kazhcha @ Abu Rayan, S/o. Hamsa, aged 33 years, Pookattil (H), Ponmundam.P.O., Tirur, Malappuram, Kerala.

- A6.** Shri. Jasim.N.K @ Chappu @ Abu Mustafa, S/o. Abdulla, aged 28 years, Nangeelankandy (H), Kuttiadi,Kozhikode, Kerala.
- A7.** Shajeer Mangalassery @ Sameer Ali @ Abu Ayisha @ Kochappa, aged 38 years, S/o. Abdulla, Chaliath Parambu House, H.No. 14/1001, Moozhikkal, Chelavoor.P.O., Kozhikode. (**Absconding**)
- A8.** Shri.Moinudheen.P.K@Moinudheen Parakadavath, @ Abu Abdulla @ Ibnu Abu Al Indonesi @ Mainuislam @ Ibnu Abdulla, S/o. Abdulla, aged 28 years, Kunnummal House, Lakshmi Nagar, Theruvath, Kanhangad, Kasaragod District.

A1 by Adv. Mohammad Sabah & Adv. Sai Pooja

A2 by Adv. Mohammad Sabah

A3 by Adv. John.S.Ralph & Adv. K.P.Mohammed Shereef

A4 by Adv. V.T.Reghunath

A5 & A8 by Adv.P.C.Noushad & Adv. Abdu Rahman.P.K.

A6 by Adv. K.P.Mohammed Shereef

Charges : A1 to A5 for offences punishable under sections 120B, 121 and 122 of the IPC and sections 17, 18, 18B, 20, 38, 39 and 40 of the UA(P) Act. Charge against A6 and A8 contains offences under sections 120B and 122 of the IPC and sections 18, 18B, 20, 38 and 39 of the UA(P) Act. Section 17 and 40 of UA(P) Act were also charged against A8.

Plea of the accused : Not guilty.

- Finding of the Judge** :
- a) The 1st accused is found guilty under sections 17, 18, 18B, 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty for the offences under section 20 of the UA(P) Act and sections 121 and 122 of IPC.
 - b) The 2nd accused is found guilty under sections 17, 18, 18B, 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty for the offences under section 20 of the UA(P) Act and sections 121 and 122 of IPC.
 - c) The 3rd accused is found guilty under sections 17, 18, 18B, 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty for the offences under section 20 of the UA(P) Act and sections 121 and 122 of IPC.
 - d) The 4th accused is found guilty under sections 38 and 39 of the UA(P) Act and section 120B of IPC. He is found not guilty for the offences under sections 17, 18, 18B, 20 and 40 of the UA(P) Act and sections 121 and 122 of IPC.
 - e) The 5th accused is found guilty under sections 18, 18B, 38 and 39 of the UA(P) Act and section 120B of IPC. He is found not guilty for the offences under sections 17, 20 and 40 of the UA(P) Act and sections 121 and 122 of IPC.

f) The 6th accused is found not guilty for the offences under sections 18,18B, 20, 38 and 39 of the UA(P) Act and sections 120B and 122 of IPC.

g) The 8th accused is found guilty under sections 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty for the offences under sections 17, 18, 18B, and 20 of the UA(P) Act and section 122 of IPC.

- Sentence or Order** :
- 1) The 1st accused/convict is sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 17, rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18B, rigorous imprisonment for 7 years under section 38, rigorous imprisonment for 7 years under section 39 and rigorous imprisonment for 7 years under section 40, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.
 - 2) The 2nd accused/convict is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 7 years and to

pay a fine of Rs.5,000/- with default prison term for one month under section 17, rigorous imprisonment for 7 years and to pay a fine of Rs.5000/- with default prison term for one month under section 18B, to undergo rigorous imprisonment for 5 years under section 38, rigorous imprisonment for 5 years under section 39 and rigorous imprisonment for 5 years under section 40, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.

3) The 3rd accused/convict is sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 17, rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18B, rigorous imprisonment for 4 years under section 38, rigorous imprisonment for 4 years under section 39 and rigorous imprisonment for 4 years under section 40, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.

4) The 4th accused/convict is sentenced to undergo rigorous imprisonment for 3 years under section 38, and rigorous imprisonment for 3 years under section 39,

of the UA(P) Act. He is further sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.25,000/- with default prison term for one month under section 120B of IPC, read with section 38 of the UA(P) Act.

5) The 5th accused/convict is sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 6 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18B, rigorous imprisonment for 4 years under section 38, rigorous imprisonment for 4 years under section 39, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.

6) The 8th accused/convict is sentenced to undergo rigorous imprisonment for 3 years under section 38, rigorous imprisonment for 3 years under section 39, and rigorous imprisonment for 3 years and to pay a fine of Rs.50,000/- with default prison term for three months under section 40, of the UA(P) Act. He is further sentenced to undergo rigorous imprisonment for 3 years under section 120B of IPC, read with section 38 of the UA(P) Act.

7) The substantive sentences imposed on all the convicts shall run concurrently.

8) All the convicts are entitled to get set off under section 428 of the Cr.PC for the entire period during which they were detained in this case.

9) MO34, MO47, MO48, MO54 with key, MO55, MO71 series, MO114 series, MO115 series, MO116 series, MO121 and MO122 series will be returned to the persons from whom those objects were seized or to the owner of the object on filing proper application within a period of 6 months from today, as those objects do not contain any incriminating materials. If there is no such application, they shall be disposed of as per rules.

10) MO97 series currency notes seized from PW25 will be forfeited to the Government as it was intended to be used for committing a terrorist act.

11) All other MOs will be retained with the records of this case, as the investigation against some of the accused persons is pending. The prosecution shall obtain certified copies of the documents in this case within the prescribed time, for future need, if any.

12) The directions made for the disposal of the MOs will come into effect only after the expiry of the appeal period.

DESCRIPTION OF THE ACCUSED

Sl. No	Name of Accused	Father's Name	Occupation	Age	Residence
1.	Shri. Manseed @ Omar Al Hindi @ Muthukka @ Hudhud @ Mansi Buraq @ Jamaltvm	Shri.Mehmood	Islamic Propagator in Guest Centre, Qatar	33	Madeena Mahal (H), Aniyaram, Chockli, Thalassery, Kannur, Kerala.
2.	Shri. Swalih Mohammed @ Yunus @ Yusuf @ Yusuf Bhai @ Bilal @ Abu Hasna @ Yunus Salim	Shri.Taha Mohammed	Private Job in Chennai	29	Ambalath House, Venganelloor, Chelad, Thrissur, Kerala.
3.	Shri. Rashid Ali @ Abu Basheer @ Rashid @ Bucha @ Dalapati @ Ameer @ Abdul Azeez @ Abu Safeer	Shri. Mohammadali	Sewing Machine Mechanic	27	House No. 6, GM Nagar, Kottaiputhur, Coimbatore, Tamil Nadu.
4.	Shri.Ramshad.N.K @ Amu @ Abu Muad @ Adam Ahammed @ Musab Ibn Umair	Shri.Ashraf. N.K	Clerk in Kuttiyadi Juma Masjid	27	Nangeelankandy (H), Kuttiadi, Kozhikode, Kerala.
5.	Shri. Safvan @ Rayyan @ 8 GB @ Kazhcha @ Abu Rayan	Shri.Hamsa	Graphic Designer	33	Pookattil (H), Ponnundam.P.O., Tirur,Malappuram, Kerala.
6.	Shri. Jasim.N.K @ Chappu @ Abu Mustafa	Shri.Abdulla	Student	28	Nangeelankandy (H), Kuttiadi, Kozhikode, Kerala.
7.	Shajeer Mangalassery @ Sameer Ali @ Abu Ayisha @ Kochappa (Absconding)	Shri.Abdulla	Engineer working abroad	38	Chaliath Parambu House, H.No. 14/1001, Moozhikkal, Chelavoor.P.O., Kozhikode.

8.	Shri.Moinudheen.P. K@Moinudheen Parakadavath, @ Abu Abdulla @ Ibnu Abu Al Indonesi @ Mainuislam @ Ibnu Abdulla	Shri.Abdulla	Salesman, UAE	28	Kunnummal House, Lakshmi Nagar, Theruvath, Kanhangad, Kasaragod District.
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Date of

Occurrence	Complaint	Apprehension	Release on bail	Commitment / Date of filing
01.10.2016	01.10.2016 (FIR No.5 in RC 5/2016/NIA/KOC)	A1 – 02.10.2016 A2 - 02.10.2016 A3 - 02.10.2016 A4 - 02.10.2016 A5 - 02.10.2016 A6 - 02.10.2016 A7 – Absconding A8 – 15.02.2017	All the accused who stood the are in custody. Not released on bail.	A1 to A7 – 30.03.2017 A8 – 11.08.2017

Commencement of trial	Close of trial	Date of Judgment	Sentence / order	Service of copy of judgment for finding on accused	Explanation for delay
03.09.2018	20.11.2019	25.11.2019	25.11.2019	25.11.2019	No delay

This case came up on for final hearing before me on 20.11.2019 and upon duly considering the records of evidence and proceeding and after hearing the Public Prosecutor and the Counsel for the accused, I do adjudge and deliver the following :-

INDEX

1.	First Information Report	.....	Page 12
2.	Summary of the prosecution version	.....	13
3.	Larger plot of conspiracy	.....	13
4.	Background of the case	.....	14
5.	Version of the Accused	.....	15
6.	The Charge	.....	16
7.	Points for determination	.....	18
8.	Sanction for prosecution	.....	19
9.	Relevance of Material Objects seized	.....	20
10.	Point No.1 and 2 - Arrest from Kanakamala and seizure of relevant digital devices	.....	23
11.	Point No. 3 - Genuineness of data extracted by the Cyber Forensic Expert	.....	34
12.	Point No.4 :	.....	40
	(I) Proof relating to authorship of chat conversations	.....
	(i) Chat	.....	53
	(II) Authorship of respective chats	.....	54
	(III) Conclusion	.....	93
13.	Point No.5:- Agreement to do illegal act (S.120B IPC)	.....	93
14.	Point No.6 - Conspiracy to commit a terrorist Act.	.....	120

(i) Role of A4 and A8 in the conspiracy plot	.....	123
(ii) Complicity of A8 in the conspiracy	.....	134
(iii) Attempt to commit an offence – necessary elements	.....	136
(iv) Conclusion	.....	142
15. Points No. 7 & 8 Waging war against India etc.	.....	142
16. Point No. 9 Section 17 of UA(P) Act.	.....	156
17. Point No. 10 Section 18B of UA(P) Act.	.....	158
18. Point No. 11 Section 20 of UA(P) Act.	.....	159
19. Point No. 12 Section 38 & 39 of UA(P) Act.	.....	166
20. Point No. 13 Section 40 of UA(P) Act.	.....	169
21. Point No. 14 - Offences committed	.....	171
22. Point No. 15 – Sentence	.....	173
23. List of Prosecution Exhibits	.....	181
24. List of Defence Exhibits	.....	202
25. List of Prosecution Witnesses	.....	202
26. List of Defence Witnesses	.....	205
27. List of Material Objects	.....	205

JUDGMENT

(1) National Investigation Agency (NIA) submitted a charge sheet against 8 persons alleging that they have committed offences punishable under sections 120B, 121, 122, 125 of the Indian Penal Code (for short 'IPC') and under sections 17, 18, 18B, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UA(P) Act'). As the presence of one of them was not secured (the 7th accused), the remaining 7 persons stood the trial.

(2) **First Information Report** : As per the order dated 01.10.2016, the Government of India directed NIA to take up investigation into the information they received that a module of Islamic State/Islamic State of Iraq and Levant/Islamic State of Iraq and Syria/ Daesh (for short 'ISIS') of about 15 individuals was working secretly in southern States of India including Tamil Nadu and Kerala with the purpose of committing acts prejudicial to the sovereignty and integrity of India, primarily by conspiring to target certain important persons and places of public importance and that they were in the process of collecting explosives and other offensive materials and were also indulging in a secret campaign of recruiting Muslim youth to join ISIS through Internet based platforms. Pursuant to this order, Shri.Yashpal Singh Takur (PW1), Dy.SP, NIA Headquarters, New Delhi, furnished a written information (Exhibit P1) to Shri.Shoukathali (PW103), Additional Superintendent of Police, NIA, Kochi and thereby the FIR in this case (Exhibit P166) has been registered, alleging the commission of offences punishable under sections 120B, 121, 121A, 122, 125 of the IPC and under sections 17, 18, 18B, 20, 38, 39 and 40 of the UA(P) Act. The array of accused persons in the FIR, besides unidentified persons, comprises of 8 named persons including the 2nd accused (A2), the 3rd accused (A3) and the

4th accused (A4). The person named as *Omar-Al-Hindi* in the FIR is later arrayed as the 1st accused (A1).

(3) **Summary of the prosecution version** : The accused persons had created several secluded social media groups consisting of core members and had decided to launch a unit of ISIS in Kerala in the name “Ansar-Ul Khilafa KL”. The group decided to make the launch of their organization a shocking event by murdering a prominent person in Kerala. They also decided to murder a few Jews who might be visiting Vattakanal in Kodaikkanal. To give effect to their decision and also to impart physical training, it was further decided to meet at a secret place near Kozhikode on 02.12.2016. Five of them [A1 to A3, the fifth accused (A5) and the sixth accused (A6)] met at a place in Kanakamala, a small hill located about 70 KM away from Kozhikode. While their meeting was going on, the investigating officer (PW103) and his team arrested them from Kanakamala. The 4th accused, who could not attend the meeting owing to an injury, was also sooner arrested. Further probe and the forensic analysis of the digital devices seized from their possession revealed all the features of the conspiracy.

(4) **Larger plot of conspiracy** : As per the prosecution, the accused persons are the members of the proscribed terrorist organisation ISIS. The seventh accused (A7), an Engineer graduated from the Regional Engineering College, Kozhikode was the leader of the module and he was in the ISIS controlled territory of Afghanistan. A7 was appointed as the leader of the module in Kerala by ISIS.

(5) A1 and A7 had created certain Telegram groups (a computer application used for sending and receiving instant messages, mainly through mobile phones) and Facebook accounts for propagating ideology of

ISIS and recruiting members for anti-national activities. They had created a telegram group named '*Taswib*' with the specific intention of attacking Jews visiting Vattakkanal in Tamil Nadu. A7 was the '*Ameer*' (leader) of that group and A1 to A4 were its members. In order to achieve their object, A2 received Rs.18,000/- from A8 through Western Union money transfer.

(6) They had also created a telegram group named '*Knowledge*' with the intention of attacking a prominent politician in Kozhikode and for disturbing public order and communal harmony. Apart from A1 to A4, the fifth accused (A5) was also a member of the said group. A1 recruited Shri. Muhammed Fayaz (PW13) into the said terrorist gang for committing the terrorist acts they planned. For accomplishing their object, A5 met PW13 at a place near Mavoor road junction, Kozhikode.

(7) Further, the accused persons conspired to attack a programme organized by *Jamaat-e-Islami* at Kochi on 08.09.2016, by deliberately driving a truck into the proposed meeting. They also conspired to attack High Court Judges, Senior Police Officers, Rationalists and Muslims belonging to Ahmadiya sect, as part of waging war against the Government of India.

(8) The eighth accused (A8) tried to perform *hijrah* (migration) to Afghanistan during June 2016, to join and support ISIS along with A7, who is waging war against Afghanistan, an Asiatic power in alliance with the Government of India. The accused persons also collected men and tried to collect arms and ammunition besides poisons and explosives, while preparing to wage war against the Government of India and to commit terrorist acts within India, it is alleged by NIA.

(9) **Background of the case :** NIA filed two charge sheets in this case, one against A1 to A7 and the other one as a supplementary charge

sheet against Shri. Moinudeen Parakkadavathu (A8). Based on the supplementary charge sheet, S.C No. 3/2017/NIA was registered and later, this case was clubbed along with the present case at the stage of framing charge and accordingly, Shri. Moinudeen is arraigned as the 8th accused. The charge sheet is filed against A7 alleging that he was absconding and consequently, warrant was issued against him. During the trial, his brother (PW55) deposed that A7 died in Afghanistan. The case against A7 was decided to be split up and dealt with by a separate order.

(10) PW76 and PW100 were also persons accused in this case, but later they were tendered pardon. Shri.Navas and Shri.Sheikh Shafiyullah, who were originally arrayed as accused persons (A6 and A7 in the FIR), are not charge sheeted and instead, they are cited as witnesses. It is alleged in the charge sheet that one Sidhikhul Aslam @ Abu Sireen is also involved in this case and he is absconding. According to NIA, investigation against him has reached nowhere as he is abroad, and hence no charge sheet is so far filed against him. The reports filed by the NIA did not reveal that whether any investigation is pending against any other persons.

(11) **Version of the Accused** : The relevant explanations offered by the respective accused persons, when they were questioned under section 313 of the Code Criminal Procedure ('Cr.P.C', for short), will be discussed in detail while appreciating the evidence. Briefly put, A1 said that while he was working at Qatar Guest Centre as an Islamic Preacher, PW100 and a person named Jameel from Kozhikode were also working with him and at that time, Jameel had access to his mobile phone, and it was Jameel who made the pro-ISIS communications, misusing the mobile phone and Facebook ID. He also stated that he was arrested near his house and not from Kanakamala.

(12) A2 submitted that PW76, his friend, had misrepresented that there was a telegram group discussing about Islamic religious principles and thus caused him to use that ID, and PW76 even shared the OTP (One time Password) generated for using the ID, and thus whatever things found in the mobile phone of A2 must be of PW76, and not of A2. He also urged that he was not arrested from Kanakamala.

(13) A3 stated that he has no connection with the telegram ID or identities such as Abu Basheer, Abdul Azeez or Bucha, which were allegedly used by him to hatch the conspiracy. It is submitted by A4 that he is not acquainted with any of the accused persons other than A6 and that no incriminating materials were seized from his possession. According to A5, the telegram ID or names such as '8GB', Kazhcha and Rayyan has no connection with him and that he was arrested at Mahe, while he was engaged in his job as a journalist. The explanation of A6 is that he believes in democracy and diversity and that he never supported any kind of violence. He also said that he reached Kozhikode only to meet a friend.

(14) A8 stated that PW76 and A7 were his friends and they were working along with him in Abu Dhabi and at that time, PW76 had misused the identity of A8 for his ISIS related activities. When A7 offered him a job in Iran, A8 went there, but only to find that A7 was of a dubious character, thus he returned to Abu Dhabi. He has no connection with the telegram IDs such as Ibnu Abu Al Indonesi and Ibnu Abudlla, which were created by PW76, a computer expert, whereas A8 is only a matriculate having no computer literacy, A8 submitted.

(15) **The Charge** : After ensuring due compliance of procedural requirements, this court framed charge against A 1 to A5 for offences punishable under sections 120B, 121 and 122 of the IPC and sections 17,

18, 18B, 20, 38, 39 and 40 of the UA(P) Act. Charge against A6 and A8 contains offences under sections 120B and 122 of the IPC and sections 18, 18B, 20, 38 and 39 of the UA(P) Act. Section 17 and 40 of UA(P) Act were also charged against A8. The accused persons did not plead guilty to the charge so framed and they claimed to be tried.

(16) **The Evidence** : During the trial, the prosecution has examined 103 witnesses, got exhibited documents up to Ext.P.174 series and got marked material objects up to MO131. Defence side did not adduce any evidence other than getting marked relevant part of former statements of certain witnesses. The major part of the prosecution evidence consists of electronic data retrieved from the mobile phones or other digital devices allegedly seized from the possession of the accused persons. These digital devices were forwarded to the Centre for Development of Advanced Computing (C-DAC), Thiruvananthapuram. The Cyber Forensic Expert (PW92) in the C-DAC extracted the contents of those devices mainly to a hard-disc (Exhibit P121) and submitted it to the court along with a detailed report (Exhibit P120) pertaining to it. The volume of the data so extracted is approximately 2000 GB (2 terabytes). Besides, Cyber Forensic reports submitted by the said expert covers data relating to various other electronic evidence, which are extracted to another hard-disk and pen-drives.

(17) The replica of data in the said hard-discs and pen-drives were supplied to all the accused persons, after ensuring that the contents tally with the data produced in the court. Accused persons were permitted to personally examine those data and to take notes. As the marking of those electronic data found in the hard-discs and other digital devices is not possible in the conventional method, they are marked in reference to their digital path, by accessing them in the open court in the presence of the

witness concerned, through which they could easily be traced out from the respective device.

(18) Learned Public Prosecutor Shri.Arjun Ambalapatta submitted a written argument note consisting of 568 pages, while concluding his argument. Learned Counsel appearing for A4 and A6 also filed argument notes. All the learned defence counsel were also heard in detail. Hearing of the case continued for 25 days, taking the whole working hours of most of those days. All the relevant digital evidences were re-accessed in open court during the hearing, in the presence of both sides.

(19) In view of the charges levelled against the accused persons, the evidence adduced during trial and the defence set up by the accused, the following points arise for consideration :

Points for determination

1. Were A1, A2, A3, A5 and A6 arrested from Kanakamala on 02.10.2016, while they were holding a meeting ?
2. Were MO1, MO4, MO5, MO8, MO11 and MO15 digital devices and the respective SIM cards seized from their possession, and MO21 tab and MO24 phone from A4? Did those devices and other electronic devices seized by NIA reach the court and the cyber forensic expert in tamper proof condition ?
3. Are the data, including the conversations allegedly made between the accused persons and the other members of the social media groups, found in those MOs, genuine ?
4. If so, are those conversations or any part of them, made by the accused persons ?
5. Did the accused persons or any of them agree to do any illegal act?

6. If yes, does the illegal act they agreed to do amount to a terrorist act ? If not, do they advocate, advise, incite, direct or knowingly facilitate the commission of a terrorist act or any act preparatory to the commission of a terrorist act ?
7. Does the illegal act agreed upon by them amount to waging war against Government of India ?
8. Did the accused persons or any of them collect men with the intention of waging war against Government of India or did they prepare to wage such war ?
9. Did the accused persons or any of them raise or provide funds for committing a terrorist act ?
10. Did the accused persons or any of them recruit any person for the commission of a terrorist act ?
11. Did the accused persons or any of them become members of a terrorist gang or a terrorist organization, involved in terrorist act ?
12. Did the accused persons associate themselves or profess to be associated with, or invite support to, a terrorist organization with intent to further its activities ?
13. Did the accused persons raise fund for a terrorist organisation with intent to further its activity ?
14. If yes, what are the offence, if any, committed by the accused persons or any of them ?
15. If the accused persons or any of them are found guilty of any offence, what is the sentence to be awarded ?

(20) **Sanction for investigation and taking cognizance:** It is beneficial to describe few general aspects before entering into the discussion

of evidence in respect of the points raised above. As per section 6(4) of the National Investigation Agency Act, 2008, NIA can investigate the offences under the UA(P) Act only on getting a direction from the Central Government. In this case, the Government of India, through PW71, the Under Secretary to the Ministry of Home Affairs, has granted Exhibit P107 order under the said provision on 01.10.2016, and thereby directed NIA to investigate into the offences. As per section 45(1) of the UA(P) Act, the court cannot take cognizance of certain offences under the said Act, except with the previous sanction of the Central Government. The prosecution has produced Exhibit P108 sanction order dated 21.03.2017 of the Government of India in respect of A1 to A6 and Exhibit P109 order dated 02.08.2017 in respect of A8. Those orders were also issued by PW71, the Under Secretary to the Government of India, for and on behalf of the Central Government. The sanctions had been granted by the Government within the time limit provided in the rules and the defence side did not fairly raise any challenge as to such aspects. The said orders were proved during trial through PW71. Though PW71 was challenged as to whether the orders were issued after applying mind or not, it is self evident from the sanction orders themselves that they were issued after perusing all relevant records submitted by the Agency and also after properly applying mind.

(21) Relevance of Material Objects allegedly seized from the accused persons : In this case, the prosecution mainly depends on the contents of the electronic devices said to have been seized from the accused persons, for proving the charge against them. The said devices are mostly the mobile phones, tablet, SIM Cards and other electronic equipments. In addition, the Agency said to have extracted the contents of social media accounts of the accused persons into CDs or DVDs through PW80 and PW81

in the presence of independent witnesses, on the basis of disclosure statements. All those electronic equipments were produced by the prosecution before the court as per Exhibit P173 series property lists and were forwarded from the court to the C-DAC as per Exhibit P174 forwarding notes. After analysing the data, the Cyber Forensic Expert, Shri.Nabeel Koya (PW92) submitted various reports along with the data he retrieved. If the prosecution succeeds to prove that those electronic devices were seized from the possession of the accused persons, and that they are responsible for the data found in the devices, the contents will be admissible in evidence under section 21 of the Evidence Act. That apart, if the prosecution succeeds to establish the basic requirements, section 10 of the Evidence Act may also help them to stick on to those materials.

(22) The learned Public Prosecutor, placing reliance on the decision in **Sherin.V. John v. State of Kerala (2018 (3) KLT 298)** contended that once the Agency proved that those material objects were seized from the possession of the accused, the court could inspect the contents of those electronic equipments to see that what is expressed or described in it, as the 'matters before the court' and then, it would be the duty of the respective accused persons to explain how he happened to be in its possession, in view of section 106 of the Evidence Act. He emphasises on the finding of the Hon'ble High Court in paragraph 21 and 41 of the said decision.

(23) It is necessary to mention about a mistake crept in the records during the trial. While marking certain documents on the side of the prosecution, like the Customer Application Forms of cell phone connection and the respective Call Data Records were marked as material objects (MO), instead of Exhibits. This mistake has occurred when the prosecution side made such a request, assuming that it should be done so, when those

documents are related to the identity of material objects (mobile phone) seized from the possession of the accused. Nevertheless, all those documents have been in fact proved as per the requirements of section 67 of the Evidence Act, by tendering them in evidence through the proper custodian of the respective records. Thus, despite being marked them as material objects, the prosecution has successfully laid foundation to prove the contents and genuineness of those documents as per the law and hence, the error did not affect their admissibility in evidence.

(24) Shri.K.P.Mohammed Shereef, learned counsel for A4 and A6, placed reliance on the following decisions: Malkiat Singh and Another v. The State of Punjab (1969 KHC 394), Sagayam v. State of Karnataka (2000 KHC 1149), State of T.N. v. Sivarasan @ Raghu @ Sivarasa and others (1997 KHC 1322), Dattatraya Narayan Samant v. State of Maharashtra (1982 KHC 798), Dadasaheb Bapusaheb Naik v. State of Maharashtra (1982 KHC 764), Mir Nagvi Askari v. CBI (2009 KHC 973), Madhu v. State of Kerala (2012 KHC 4019), Hussein Dastgir v. State of Maharashtra (1969 KHC 259), Mustkeem @ Sirajudeen v. State of Rajasthan (2011 KHC 4611), Kartik Ram Devangan v. State of Chhattisgarh (2018 KHC 3413), Bhimaraya @ Bhimanna v. State of Karnataka (2016 KHC 2889), State of Himachal Pradesh v. Rajinder Thakur (2016 KHC 4214), Ashish Batham v. State of Madhya Pradesh (2002 KHC 1051) and S.Arul Raja v. State of Tamil Nadu (2010 (8) SCC 233).

(25) Sri. P.C.Noushad, learned counsel appearing for A5 and A8, relied on the following decisions: Purushothaman v. State of Kerala (2005 (4) KLT 842 (SC)), Sudershan Kumar v. State of H.P (2015 (2) KLT Suppl. 64 (SC)), Vijay Thakur v. State of Himachal Pradesh (2014 (4) KLT

SN 79), Majendran Langeswaran v. N.C.T.of Delhi (2013 (4) KLT SN 126), Baliya @ Bal Kishan v. State of M.P (2012 (3) SCC (Cri) 1231), Piara Singh v. State of Punjab (1969 AIR SC 961), Pushpangadhan v. State of Kerala (2004 (2) KLT SN 87), D.Velayutham v. State (2015 CrLJ 3168), Sri Indra Das v. State of Assam (2011 (3) SCC 380), Arup Bhuyan v. State of Assam (2011 (3) SCC 377) and State of Kerala v. Dr.Raneef (2011 (1) SCC 784). The legal principles enunciating from those decisions will be applied at the appropriate place in the following discussion.

(26) Several digital devices have been allegedly recovered from the accused persons and those devices have got identified during trial through the respective witnesses. However, the discussion is limited to those devices from which the Cyber Expert said to have retrieved relevant data. This method is also followed in the case of oral evidence.

(27) **Point No.1 and 2 (Arrest of the accused persons from Kanakamala and seizure of relevant digital devices from them)** : As observed above, the prosecution mainly relies on the electronic data retrieved by PW92 from the devices allegedly seized from the accused persons. It is their case that the mobile phones seized from the accused persons contained large volume of conversations between them and their group members, in the form of social media chats. Those conversations may amount to confession or admission admissible under sections 10, 21 and 30 of the Evidence Act, if the recovery of those devices, genuineness of its contents and the relationship of the accused persons with those conversations, are duly proved.

Evidence of PW2 and PW103 as to arrest

(28) Prosecution relies on the evidence of PW2 Shri. C.B. Prasun, an Income Tax Officer, and the Investigating Officer (PW103) to prove this

fact. They testified that on 02.10.2016 at about 1.15 p.m., they along with the team members of PW103 reached atop of Kanakamala. Then they saw A1, A2, A3, A5 and A6 beneath a cashew tree near a telecommunication tower. At that time, A1 was addressing the remaining persons. A1 declared that they should spread the ideology of ISIS and to collect men and explosives for a *Jihad*. Then PW103 and his team encircled them and arrested each of them and seized materials found in their possession, as described in Ext.P12 mahazar.

(29) PW103 arrested A1 as per Exhibit P6 arrest memo and he searched his body after preparing Exhibit P7 personal search memo. He also seized MO8 Silver colour Samsung mobile phone along with MO8 (a) series SIM cards from the possession of A1. PW103 arrested A2 as per Exhibit P8 arrest memo and searched his body after preparing Exhibit P9 personal search memo. He seized MO11 LeTV mobile phone and MO 11(a) & (b) Sim card from the possession of A2. He also arrested A3 as per Exhibit P4 arrest memo and searched his body after preparing Exhibit P5 personal search memo and seized MO4 Samsung Black colour mobile phone along with MO4 (a) series SIM cards, MO5 Samsung White colour mobile phone along with MO5 series SIM cards and memory cards, from A3.

(30) It is further testified by PW103 that he arrested A5 as per Exhibit P10 arrest memo, searched his body on preparing Exhibit P11 personal search memo and seized MO15 LYF Black colour mobile phone along with MO15 series memory cards and SIM cards, MO16 Samsung Blue colour mobile phone and MO18 8GB pendrive from A5. He also seized MO130 series track suits and other items from the back-pack found in the possession of A5. According to PW2 and PW103, A6 was also arrested then, as per Exhibit P2 arrest memo and search conducted on his body after

preparing Exhibit P3 personal search memo led to the seizure of MO1 Samsung Black colour mobile phone along with MO1 series SIM card and Memory card. It is also come out in evidence that PW103 sealed the digital devices of each accused persons separately in tamper proof condition and he produced them before the court on 04.10.2016, as per Ext.P 173 series property lists.

(31) The evidence regarding arrest of A1 to A3, A5 and A6 from Kanakamala is stoutly challenged by the defence side. It was brought out in cross examination of PW103 that nobody from the area near Kanakamala was cited as a witness for the arrest. He further admitted that PW2 and the another person who said to have witnessed the arrest were brought from 70KM. It is strenuously argued that as per section 41B of the Cr.P.C, the police officer has to prepare a memorandum of arrest and to get it attested by respectable members of the locality, where the arrest is made. It is also contended that Section 51 of the Cr.P.C further mandates that the police officer is liable to issue a receipt to the person who is arrested as to the articles seized from his possession and both these provisions have been violated in this case.

(32) PW2 was subjected to threadbare cross examination to show that he is only a planted witness. It is elicited that there are no records in his office to show that he participated in the arrest or seizure. Though he deposed that there are trees near the tower, PW5 testified that there is only one cashew tree. Even though PW2 and PW103 stated that in the said area there was abundant growth of tall grass, Exhibit P16 site plan does not show it. It is also elicited from PW2 that the said area is open space and it is possible from there to see a vehicle coming uphill and its sound is also audible from there. When PW2 stated that he got information about the

plan of PW103 on 01.10.2016 itself, the presence of PW2 was seen arranged only on 02.10.2016, as per Exhibit P12 mahazar. PW2 is also not able to recollect the route through which, or the number of the vehicle within which, they reached Kanakamala.

(33) When the evidence of PW2 is appreciated in the light of other factors, I find no relevance in the materials brought out in cross examination. 02.10.2016 was a public holiday for Gandhi Jayanthi and hence there need not be any records in his department as to his journey on that day. Even though PW2 mentioned about 'trees' (instead of a single tree), he did not say anything about the number of trees. Whether he has stated about the trees in that vast area or specifically about the cashew tree under which he said to have found the accused persons, is to be read along with his entire version. When he mentioned about the place where the accused were found, he clearly used a singular noun (tree). Omission to include the location of tall grass in the site plan prepared at a later point of time by the Village Officer is also no ground to disbelieve the version of PW2 and PW103, as to the existence grass. The presence of grass is specifically mentioned in Exhibit P12. True, PW2 deposed that one might hear the sound of a vehicle coming upwards and it could also be seen by him. But the prosecution case is that the accused persons were sitting under a tree. It is not evident whether, the same thing could be experienced from that angle. It is also in evidence that there was heavy wind which might have affected audibility. As regard to his version as to the date on which he got information about the plan to arrest the accused, I did not find any suspicion. PW2 deposed that on the previous day, his senior officer instructed him to join PW103 for the said purpose. What is stated in Exhibit P12 is only that PW2 joined next day. There is also nothing unusual about

the inability of PW2 at present to recollect the route through which they reached Kanakamala or the number of their vehicles.

(34) It is in evidence that Kanakamala is a small hill having about 70 acres and a lonely place, despite the occasional visits of people for sightseeing. Though it was brought out in cross examination that there is a Gurukulam in the said hill, it is at least 400 meters away from the place of alleged arrest. Arrest of any persons from such a place should be a swift and timely action, leaving no room for their escape. It is then imprudent to insist that the Agency should ensure local witnesses even for the arrest, albeit they could have been obtained thereafter, in compliance of S.41B of the Cr.P.C. True, it would be ideal to have the signature of the arrested person on the search memo, in terms of S.51 of the Cr.P.C. But infraction of those procedural provisions is no ground to discard the sworn testimony of the witnesses, if it is otherwise found believable.

(35) The question is thus, whether there is any reason to disbelieve PW2, an Officer from an independent department, who said to have witnessed the arrest. He is in the service of the Central Government is certainly no ground to disbelieve him. It is well settled that the evidence of a witness should not be approached with an initial distrust for the mere reason that he is a Government official. Their evidence is also to be analysed in the usual manner. Resultantly, none of the challenges are sufficient to discredit PW2 or PW103 as to the version regarding the arrest of the said accused persons.

Absence of tower locations showing their presence at Kanakamala or video showing their arrest - Relevance.

(36) The defence side further contended that NIA failed to produce Call Data Records or other authentic evidence to show that the said accused

persons or even PW2 or PW103 reached Kanakamala at the time and date they allege. It is contended that if the tower location or CDR of those persons were brought before the court, it would have strongly corroborated the claim of the prosecution, but the absence of the same seriously weakens the prosecution case.

(37) In fact, there is evidence as to tower location of A2 and A3 that they reached near Kozhikkode on 02.10.2016, which is proved through PW74, PW85 and PW86. It is the submission of the learned Public Prosecutor that the digital devices of the accused persons were switched off and that is why the CDR did not reflect any eventuality closer to the time of arrest. Anyway, I am at loss to understand the contention that absence of CDR would dispel credit of those witnesses. Even when CDR or Tower location data is produced, the court has to depend on oral evidence, as those records will show only that the holder of the cell phone was present in a particular locality, the area of which may extent to many square kilometres. CDR or tower details will not also rule out the possibility that the persons who were previously detained, were maliciously brought to a place with their live cell phones.

(38) It is also forcefully contented that NIA could have digitally recorded the process of arrest and the alleged speech delivered by A1 in the meeting. As pointed out above, such aspects are to be analysed in the light of the reliability of the entire evidence on record. It may appear that it would have been a concrete evidence, if the Agency had video-graphed the proceedings of arrest. But this process also will not rule out the possibility that the arrest as found in the video footage is only a staged one. This is why the courts are left with the task of appreciating the evidence with its intrinsic value, rather than acting on the hypothesis ensuing from it.

(39) When the learned Prosecutor tried to explain that the tower location is insufficient to prove the physical presence of a person at a particular location, Shri.Shereef, learned counsel for A6, asserted that accurate geographic location of the holder of a mobile is available in Google Services and there are also computer applications which indicate the position of even a turned off mobile phone. Whatever may be the evidence that could have been brought out by the prosecution to corroborate the testimony of PW2 and PW103 as to the factum of arrest, this court has to address the question in a different perspective. It can seek corroboration of a fact only when the evidence tendered on a particular point is either weak or when the law itself requires corroboration for such evidence. (**Vadivelu Thevar v. State of Madras: AIR 1957 SC 614**). When a fact is otherwise satisfactorily proved by oral testimony, it is totally unnecessary to draw an adverse inference against the prosecution for not unfurling corroborative evidence in the form of CDR or cutting edge technology like Google geolocation service.

(40) **Corroboration by PW5:** One who still insists for corroboration can certainly rely on the evidence of PW5. He is the Caretaker of Vodafone Mobile tower which is located just adjacent to the place of arrest at Kanakamala. Even when he was not able to identify the accused persons in the dock, he deposed that on 02.10.2016 at 3.00 p.m., when he reached Kanakamala, he saw that five persons were detained by the police, near a cashew-nut tree standing adjacent to the tower. He further deposed that the police took them away at about 4 p.m. He was also subjected to searching cross examination by the learned counsel of each accused, but nothing relevant was elicited to disbelieve him. It is not that he did not identify the accused persons, but that he saw five persons there under the

custody of the police at the exact spot at that time, is important, and it fortifies the version of PW2 and PW103.

Bus ticket taken at 10:54 am- does it derail the prosecution case?

(41) A very interesting contention is put forward by Shri.Shereef about a bus ticket said to have been recovered from the possession of the gathering found beneath the cashew tree. According to the prosecution witnesses, the bus ticket was found on a newspaper spread in front of the accused persons, along with many other items (It is shown as item No. 11 in Exhibit P12). The time at which the bus ticket was generated is 10.54 a.m. on 02.10.2016. It is issued for a bus named 'Mazafi' plying from Vadakara to Kozhikode. Based on this material, the learned counsel contended that one could not reach Kanakamala before 1.35 p.m. (the time of arrest), had he traveled in a vehicle from Vadakara to Kozhikode at that time, as the time required to reach Kozhikode from Vadakara and then back to Kanakamala is more than 3 hours.

(42) There is no dispute that it is difficult to travel from Vadakara to Kozhikode and then back to Kanakamala from there, within the time available between 10.54 a.m. and 1.35 p.m. PW2 admitted that time required to reach Kanakamala from Kozhikode is 2 hours. However, the presence of bus ticket at the place of alleged arrest does not fairly establish that somebody had actually traveled all the way from Vadakara to Kozhikode. The only question raised during trial in respect of this ticket is a suggestion to PW2 that it was issued to him, which he did not agree. As rightly pointed out by the learned Public Prosecutor, had anyone of the accused persons took such a bus ticket and then got down from it within few minutes, there will be no incongruity. It is significant to bear in mind that, if the prosecution case is believable, the members of the group kept

the place of their meeting a top secret until the last minute, expecting that they might be under close surveillance of the intelligence agencies. The information shared among the members of the group was only that they should reach Kozhikode and meanwhile to collect further clues about the meeting place from 'Yusuf'. If one of them might have got last minute information about the meeting place, no sooner than he had stepped on to the said bus, then he has no option, but to get down in the nearest stop and to come back to Kanakamala. When persons following highest level of precautions and stealthy methods to dodge the intelligence agency, it is not unusual that a participant of such a meeting might change his conveyance midway to divert attention.

(43) Interestingly, there are chat conversations displaying even their apprehension that NIA might be after them. Above all, there is a message from one of the participants called 'Rayyan' that he suspects that he was under surveillance. The time of that message is 10.18 am (4.48 am UTC. To which 5.30 hours are to be added) as per Exhibit P 121(d)(1) chat conversation, which he made with one Bilal. All these possibilities remain open-ended and hence the presence of such a ticket with the arrested persons, in a way, justifies the prosecution case, and it does not make the prosecution case suspect. At the same time, this indicates the commitment and the painstaking efforts taken by the learned defence counsel to bring to light the loose ends in the investigation, if any, and it is indeed commendable.

Arrest of A4 and seizure of MO21 and 24

(44) A4 was not present at Kanakamala. As per the prosecution case, when PW103 noticed that A4 was not there, he sent PW84, Deputy Superintendent of Police, NIA, Kochi, to search the residence of A4. PW84

said to have reached the residence of A4 at about 6.30 p.m. along with his team members and PW10, another Income Tax Inspector, working at Kozhikkode. Exhibit P116 is the search memorandum prepared by PW84 in respect of the search. Ownership of the said residential house is proved through the testimony of PW41, the mother of A4 and PW30, the Secretary of Kuttiyad Grama Panchayath and by Exhibit P51 ownership certificate of that building.

(45) PW84 searched and seized MO21 Samsung Tab and MO.24 mobile phone with SIM card from the room of A4, the witnesses testified. According to them, Exhibit P23 was the search list prepared in respect of seizure, which was attested by PW10 as well. During the trial, MO21 tab, MO 24 phone and MO 24(a) SIM card were identified by PW10 and PW84.

(46) The seizure of MO21 from the said residence is also seriously challenged by the defence side. It was brought out in evidence that PW10 is not able to distinguish a tablet of the same make from that of MO21. It was also brought out that despite being a Senior Police officer, PW84 did not arrest A4 at the time when MO21 was alleged to have been seized, even when A4 is an accused named in the FIR. It is then explained by PW84 that he did not have administrative permission to arrest an accused and further, he decided to question A4 in detail by bringing him to a nearby police camp by issuing a notice for appearance, and then to arrest him, if necessary.

(47) It is true that PW84 did not choose to arrest A4 at the time of seizure of MO21. His arrest at the nearby police camp also is attempted to be proved through their testimony. Exhibits P25 and P26 are the arrest memo and inspection memo prepared by PW84 in this regard which were also attested by PW10. When the evidence of PW84 and PW10 is considered in detail, I do not find any reason to disbelieve them as to the seizure of

MO21 tab or MO 24 phone. As rightly put forth by Shri.V.T.Reghunath, learned counsel for A4, it is bit surprising that an accused named in the FIR was dealt with in that manner, especially when the Agency was expecting his participation at Kanakamala. Then, if at all an administrative sanction was required, it should have been obtained beforehand, it is argued by Shri. Reghunath. Nevertheless, merely because PW84 did not record the arrest of A4 then and there, it does not make the seizure suspicious. The cross examination of both these witnesses does not reveal any ground to disbelieve them. Exhibit P173 shows that MO21 and MO24 were produced before this court on 04.10.2016, in a sealed condition, without any considerable delay. From Exhibit P174 forwarding note sent from this court to C-DAC and from the evidence of PW92, the Cyber Forensic Expert of C-DAC, it is evident that the said tab reached C-DAC in a tamper proof condition on the same day (Page No. 14 of Exhibit P120). Contemporaneous documents like Ext.P116 search memorandum and Ext.P23 search list had also reached in court in time. Altogether, the seizure seems to be proved beyond any doubt.

(48) It is significant to note that there is an important distinction between digital devices and ordinary material objects, as regards to the chance of manipulations. One may say that digital devices are easily susceptible to tampering than the ordinary material objects. Albeit, the digital instruments have one obvious advantage over the other. If the Investigating Agency or anybody else has tampered with a digital device after its seizure, it can easily be detected during the examination by a Cyber Expert. This aspect will be dealt with in detail hereafter, and it also gives credence to the prosecution case as to seizure, as the contents of the said devices itself speak eloquently about their previous use by A4.

(49) Apart from the oral evidence of PW2 and PW103, there is also other evidence to determine whether these digital devices or most of them were used by the respective accused persons until their arrest. If it is proved that those devices were used by them till that day, it also corroborates the finding that those devices were seized from the possession of the accused persons. This aspect will be discussed along with Point No. 4.

(50) **Conclusion** : It is proved by the prosecution that A1 to A3, A5 and A6 were arrested by PW103 on 02.10.2016 at Kanakamala, while they were holding a meeting. It is also proved that MO1, MO11, MO 4 and 5, MO8, MO15, MO 21 and 24 were seized from the possession of A1 to A3, A5, A6 and A4 respectively, and they were produced before the court without considerable delay and in a tamper proof condition. It is also proved that the said digital devices were forwarded from this court to C-DAC on 04.10.2016 and on the same day they reached C-DAC in tamper proof condition.

(51) **Point No. 3 (Genuineness of data extracted from the digital devices by the Cyber Forensic Expert)** : Genuineness of digital data including the chat conversations found inside the said devices is a very crucial aspect. Those digital devices are corruptible by data manipulation, if the Agency desires so. It is thus the task of this court to verify whether the data found by PW92 are genuine, especially when the defence side disowns the contents.

(52) Shri. Nabeel Koya (PW92) has M.Tech in Digital Electronic and Communication and he has been working as the Scientist in C-DAC for the last 15 years. According to him, he made digital analysis for the courts in more than 600 cases. The prosecution produced an affidavit of this witness, as provided under sections 296 and 297 of the Cr.P.C. A formal objection

was raised by the learned counsel appearing for A4 and A6 against reading the affidavit in evidence. However, the affidavit was read in evidence observing that the evidence of the witness is of a formal character and that the decision in **State of Punjab v. Naib Din (AIR 2001 SC 3955)** permits the court to receive such affidavit in evidence. It is not in dispute that PW92 is not a witness of facts. What he did in respect of this case is only that he scientifically examined the digital devices and submitted a report. As provided in Section 296(2) of the Cr.P.C, both sides were permitted to examine him in open court on all matters he narrated in the above affidavit.

(53) PW92 has forensically examined 36 digital devices, which include all mobile phones said to have been seized from the possession of the accused persons at the time of their arrest. In addition to the said mobile phones, other electronic devices allegedly seized from the residence or work place of the accused persons were also forwarded to C-DAC for examination. As the prosecution case mainly depends on the chat conversations seemed to have been retrieved from the mobile phones and a tablet, the major part of his evidence pertains to their contents.

(54) He deposed that MO8 Samsung mobile phone (allegedly of A1) contains Exhibit P99 series Malayalam speech and certain images relating to ISIS. It is also evident from his version that, from MO11 LeTV mobile phone (allegedly of A2), Exhibit P148(a) chat conversations in the telegram group named 'Gate', Exhibit P95(a) chats in the telegram group named 'Bab-Al-Noor', Exhibit P121(b) chats in telegram group named 'Taswib', Exhibit P121(c) chats in the telegram group named 'Knowledge', Exhibit P121(a) chats in telegram group called 'Play Ground', Exhibit P149(b) chat conversations in the telegram group 'Darul Fikr' and Exhibit P95(a), Exhibit P121(d) series, Exhibit P121(e) series and Exhibit P151 series personal

telegram/Facebook messenger chats were retrieved.

(55) It is also discernible from his evidence that from MO4 Samsung mobile phone (allegedly of A3), he found Exhibit P149(c) chats in 'Darul Fikr' group, Exhibit P148(b) chats in the group named 'The Gate', Exhibit P121(b)(1) chats in 'Taswib', Exhibit P121(c)(1) chats in 'Knowledge' and Exhibit P121(f) series personal telegram/Facebook messenger chats. According to him, from MO24 Huawei mobile phone (allegedly of A4), he found Exhibit P42 photos (of A4 and PW21) and some other photographs of A1 and PW100. He also retrieved Exhibit P155 personal WhatsApp chat (between A4 and PW100) from MO24. PW92 further deposed that, when he analyzed MO21 Samsung tablet (said to have been seized from A4), he found Exhibit P121(a)(1) chats in 'Play Ground', Exhibit P149 chats in 'Darul Fikr', Exhibit P148 chats in 'the Gate', Exhibit P95 series chats in 'Bab-Al-Noor', Exhibit P121(b)(2) chats in 'Taswib', Exhibit P121(c)(3) chats in 'Knowledge' and Exhibit P121(l) series and Exhibit P150 series personal telegram chats.

(56) Shri.Nabeel Koya further deposed that from MO15 LYF mobile phone (allegedly seized from A5), he found Exhibit P121(c)(2) chats in 'Knowledge' and Exhibit P29 and Exhibit P121(i) series personal telegram chats. It is also clear from his evidence that when he forensically analysed MO1 Samsung mobile phone (allegedly recovered from A6), he found Exhibit P121(j) series and Exhibit P90 and MO65 series personal telegram/Facebook messenger chats. He also deposed that he forensically analysed the memory cards and the SIM cards produced along with the mobile phones and retrieved their serial numbers (ICCID numbers). All these matters were included in the reports submitted by him and he further provided the entire data he found in those devices in the hard discs supplied

by him. When PW92 was examined in court, Exhibit P120 report prepared by him, Exhibit P121 hard disc in which he submitted major part of the data he analysed, Exhibit P122 report in respect of five other digital devices sent to him through court, were marked. Exhibit P123 series are the pen drives he furnished, wherein the data of those additional devices are included. Through this witness Exhibit P124 to Exhibit P145 reports and extracted data were marked. MO114 series to MO121 were also got identified through him.

(57) This witness was cross examined at length and he was challenged on all possible angles, as to the genuineness of the data he said to have retrieved or found out. He was challenged even on minute aspects such as modification found on the property of a photograph with number 1469666638162. (The contents of this photo is not relied on by any side). He conceded that it is shown in Exhibit P121 that the said photo was modified on 28.07.2016. But the expert explained that this occurs when a datum is copied for the purpose of forensic examination. Then its 'created date' would be shown as the date when it was so copied and the 'modified date' would reflect as the original date of creation of that particular datum, he deposed. Thus, in short, there is no actual *modification* in that photo.

(58) The possibility of tampering with the relevant digital devices was critically posed during his cross examination. He admitted that if the system date and time in a mobile phone or computer was set to a back date and time, the report prepared on analysis of such devices would reflect only such manipulated date and time. He further agreed that he was not required to check that possibility when he inspected the devices in question and thus he did not verify whether the date and time of those devices were so manipulated. It is also brought out through him that he was not required

to verify the last login date, date of creation or last date of re-set of password of the social media accounts said to have been used by the accused persons. Based on the said version, Shri.Shereef fervently argued that no reliance could be placed on the report of the Cyber Forensic Expert, when he was exposed to the above extent. The Agency playfully opted not to request the Expert to verify those vital aspects, which would have spoken volumes about manipulation, he persuasively argued.

(59) The said submission may appear to be attractive at the first blush, but it lacks merit on a deeper analysis of the entire evidence of the expert. True, change in system time may make it appear that the data in the system are generated at a different point of time. This limitation is applicable only to the data generated by an individual system, and not the data received by that system or forwarded from it with the aid of computer applications rooted in Internet. In other words, if a message is sent or received using web based platforms such as telegram or gmail, the time or date factor attached to that data will be shown as per the real universal time and date of the server, and not the altered date of the phone. This fact has been clarified by the witness when he was re-examined. He assertively stated that it is not even possible to use social media if the system time is changed from the real time. The time of social media activities are recorded in accordance with the time of the server and not related to the system time, the expert clarified. He also said that such application based activities could not be edited or modified by using a phone or computer, once the activity is over. Almost all the data relied on by the prosecution are not generated by a private computer system, vulnerable to editing of time, and they were all generated through web based applications. Resultantly, the time they display can only be the universal time.

(60) **The seal of authenticity in data** : There is yet another element in his evidence to check the genuineness of the data he found in the devices. The witness volunteered when he was cross examined that it is part and parcel of their forensic analysis that they would search for “mismatches” in the data. He succinctly explained what is a ‘mismatch’. A Cyber Forensic Expert is furnished with the summary of the case in the forwarding note. From that summary, he would get the date and time at which a device under examination is seized by the police. If the expert finds any modification in the data contained in that device after the date of its seizure, it means there is a ‘mismatch’, the witness testified. An expert would examine the possibility of ‘mismatch’ whether or not it was specifically requested in the forwarding note and if any ‘mismatch’ is found, it would be reported to the court, and in a case where no ‘mismatch’ is reported, it means there is no data modification after the seizure of the device, the witness categorically asserted.

(61) In Ext. P 120 report (and in all other reports, with such variations), the date of seizure of the respective devices is shown as 02.10.2016. Almost all the relevant data found were originated prior to this date. Then the above unchallenged explanation offered by the witness is virtually conclusive and it gives the imprimatur of authenticity on the data found in the said digital devices. As found above, all the digital devices were produced before the court and forwarded to the FSL in a tamper proof condition, without delay. Those electronic equipments contain replica of data found in other devices (with natural variations), furnishing proof in itself about the relationship between the holders of the equipments. When all the challenges raised against the testimony of Shri.Nabeel Koya (PW92) are dispelled, his evidence appears to be of pristine quality.

(62) **Conclusion** : The data found in MOs examined by the expert are genuine and acceptable and there are no reasons to suspect any manipulation in them.

(63) **Point No.4 : (Are the conversations found in the digital devices made by the accused persons ?):-** The learned Public Prosecutor, Shri.Arjun Ambalapatta forcefully submitted that if the seizure of the respective digital devices from the accused persons is properly proved, the prosecution is relieved from the burden to show the relationship of the accused person with the communications found inside their device. He further submitted that the accused persons did not offer any plausible explanations as to how or why such communications found a place in the devices seized from their exclusive possession. Even when they were given an opportunity to elaborate upon those aspects by putting separate questions as to one and all communications found inside their devices, they opted not to offer any valid explanation and thus adverse inference has to be drawn against them, the learned Prosecutor submitted. He relied on the decision in **Govindaraju v. State of Karnataka (2013 (15) SCC 315)** to support his submission. Placing reliance on the decision in **Sherin V. John case (supra)**, Shri.Arjun urged that when an electronic device is seized from the possession of the accused, it is his liability to explain why he should not be held responsible for those matters found inside the device. He also placed reliance on the decision of the Apex Court in **Union of India v. Yasmin Mohammed Zahid** (Judgment dated 02.08.2019 in Crl.Appeal No. 1199/2019) in this respect.

(64) As submitted by the learned Public Prosecutor, the accused persons, other than A1 and A2, did not offer any explanation as to their relationship with the data found inside the equipment seized from their

possession. A1 said that his phone was misused by one Jameel. A2 made a plea that when he became curious about Islam religion, he got involved in many public social media groups and as a result he became acquainted with PW76, without knowing that he supports ISIS. During the last week of September 2016, PW76 furnished A2 a telegram ID named 'Bilal', by sharing the One Time Password (OTP) he had received. A2 stated further that, if the data found within his mobile phone pertain to ISIS or Jihad, it is PW76 who is responsible. Probability of these explanations will be analysed later.

(65) It is an elementary rule that the court should show extreme caution while appreciating the evidence in a case where the punishment prescribed is harsh. In such cases, the prosecution has a heightened burden of proof. Otherwise, it is of course possible to infer that the materials found in a device seized from the accused persons are related to them. But this being a case in which the accused persons have allegedly conspired to commit terrorist acts, a very high level of satisfaction is required for making such inferences. When the defence side contented that the electronic devices were not seized from the possession of the accused persons, it is the duty of this court to prima facie ensure that the devices were not planted by the Agency to make it appear that the accused persons have possessed objectionable materials with them at the time of arrest.

(66) **Evidence to show that MO8 phone was previously used by A1 :-** The relevant material objects allegedly seized from the possession of A1 is a Samsung mobile phone with memory card and SIM card (MO8, MO8(a) and MO8(b) respectively). Exhibit P99 series voice clip is found inside the said mobile phone and MO21 tab and the prosecution attributes high relevance to the said piece of evidence to connect A1 with the major

penal offences charged against him. The prosecution has proved through PW74, the Nodal Officer of the Bharathi Airtel Limited that A1 has subscribed mobile phone connection with MO8(a) SIM card from Bharathi Airtel Limited. MO74 is the original customer application form submitted by A1 for getting the telephone connection. The form consists of the passport size photograph of A1 and the copy of his passport. MO73 is the Call Data Records (CDR) of the said phone connection along with a certificate as provided under section 65B of the Indian Evidence Act. The cross examination of PW74 was uneventful, as no relevant material was elicited to discredit him.

(67) The CDR clearly describes the IMEI number of the mobile phone with which MO8(a) SIM card had been used by the subscriber during 01.03.2016 to 31.05.2016. Significantly, the IMEI number of MO8 hand set is provided by PW92. On a comparison of the data provided in Exhibit 120 report submitted by PW92 and the IMEI number reflected in MO73 CDR, it is obvious that MO8(a) SIM card had been inserted and used in MO8 mobile phone by the customer during the said period. When it is proved that the said phone connection was availed by A1, the only possible inference is that A1 had used the said mobile phone during the said period, especially when A1 has no case that it was done by somebody else. This aspect unquestionably ensures the correctness of the version of PW2 and PW103 that A1 possessed MO8 mobile phone at the time of his arrest.

(68) **Previous user of MO11 phone by A2 :-** As per the prosecution case, MO11 LeTV mobile phone was seized from the possession of A2 at the time of his arrest. Exhibit P95(a), Ext.P121(c), (d), (e) series, Ext.P151 series, Ext.148(a) and Ext.P149(b) and many other relevant materials are retrieved from this phone. It is also proved through PW74, the said Nodal

Officer that A2 had subscribed a cell phone service through MO11(b) SIM Card. MO77 is the original customer application form accompanied by the ID proof of A2. MO76 CDR of the said phone number during 01.03.2016 to 02.10.2016 is also proved through PW74. The CDR is produced along with a certificate as per section 65B of the Evidence Act. The IMEI number of MO11 mobile phone is provided by PW92, the Cyber Forensic Expert, who submitted Exhibit P120 report. On a perusal of MO77 CDR, it is clear that the same IMEI number found a place in the CDR and thus, MO11 LeTV mobile phone had been used by the subscriber during 01.03.2016 to 02.10.2016 to avail the cell phone service. Without any hesitation, now it can be inferred that the subscriber of the Sim card being A2, he must have been using that phone connection in MO11 mobile phone during the said period, as he did not raise a contrary dispute. In fact, A2 admitted this fact in his statement given under section 313 of Cr.PC., for raising a different contention, which is not relevant here.

(69) Evidence to show that A3 used MO4 and MO5 mobile phones previously :- Exhibits P121(b1), (c1) and (f) series chats and P148(b), P149(c) are found from MO4 Samsung mobile phone seized from A3. As per the prosecution, certain other important data were also seen saved in MO5 mobile phone, when it was recovered from A3. Several SIM cards were seized from the possession of A3 along with MO4 and MO5 mobile phones, at the time of his arrest. However, none of the SIM cards were issued in the name of A3. Hence, an inference as made above in the case of A1 & A2 is not possible in his case, by plainly analysing the CDR. But, there are other evidence to connect A3 with the mobile phones.

(70) From Exhibit P120 report of PW92 and from his evidence adduced before the court, it is proved that a telephone number 7373734622

is saved in MO5 against the name 'My Acinus'. Seven other phone numbers were also seen saved in the said phone as fake numbers. Contact number of A2 was also saved in the said phone. The number which is saved as 'My Acinus', was subscribed by an institution named 'Acinus Pharma'. This is proved through PW85, the Nodal Officer of Aircel and from the attested copy of the Customer Application Form (Exhibit P76). The witness further deposed that he issued the attested copy, as the original is not available. MO98, the CDR in respect of the said mobile phone is also proved through him. There is no challenge in cross examination of PW85 as to the genuineness of those documents. It is also not in dispute that this SIM card belongs to that institution.

(71) PW48 is the brother of A3. He testified that he worked in 'Acinus Pharma' and that the said pharma company had given him a SIM card. When Exhibit P76 is put to the notice of this witness, he agreed that it was the customer application form submitted by his company for the mobile phone connection. He further agreed that the SIM card issued to him by his company was used by his family members and that the same was later seized by NIA. PW48 further stated that neither himself nor his family members other than A3, has any connection with any other accused persons in this case or ISIS. Exhibit P120 report of the Cyber Expert (PW92) reveals the IMEI number of MO4 and MO5 mobile phones seized from the possession of A3. From the CDR of the phone connection issued in the name of Acinus Pharma, it is evident that the SIM card had been used in both MO4 and MO5 during the period of 27.09.2016 to 02.10.2016. Thus, it can safely be inferred that the A3 had used the said mobile phones for availing cell phone service through MO5(a) SIM card during the said period.

(72) **Previous user of MO24 phone by A4 :-** As per the evidence of PW2 and PW103, MO24 Huawei mobile phone and MO24(a) BSNL SIM card were seized from A4 at the time of his arrest. From MO24, PW92 retrieved photographs of A4 and PW21, PW100 and the details of contact with the mobile number of A1. From MO24(a) SIM card also the Cyber Expert retrieved another phone number of A1 and the phone number of PW21. From the evidence of PW77 and from MO83 Customer Application Form accompanied by the ID proof, it is proved that A4 subscribed a BSNL cell phone connection with phone number 9995716060. On a perusal of MO82 CDR it is evident that the IMEI number of the mobile phone instrument used to avail the cell phone service during 01.03.2016 to 02.10.2016 is **86275202899827**. The prosecution alleges that MO24(a) SIM card pertaining to this connection was seized along with MO24 phone and that A4 used the said SIM card inside that device.

(73) In Exhibit P23 search list, the IMEI number of MO24 is noted down as **862752028998279**. Even though the IMEI number found in Exhibit P23 is same as that of IMEI number recorded in the CDR (except for the last digit (9), which is insignificant to identify the phone, as per the undisputed evidence of PW70, the Nodal Officer of Tata Tele services), the IMEI number recorded in Exhibit P120 Cyber Report as that of MO24 is a different one. In page No. 24 and 31 of Exhibit P120, the expert recorded two IMEI numbers, but both numbers have no similarity with that of the IMEI number found in the search list or the CDR. But the learned Public Prosecutor pointed out a curious thing in the report of the expert that, in both pages, the IMEI numbers noted as this phone is exactly same as that of a Nokia RM1110 mobile phone. This aspect points out a possibility that there occurred a mistake in Exhibit P120 while noting down the IMEI

numbers of either of these two phones. In this circumstance, I decided to physically verify the IMEI numbers of MO24. When it was done (the phone was charged and switched on and the digits *#06# were typed on the emergency key pad, as the phone was found pattern locked), the IMEI number displayed on the screen of the mobile phone is found as **862752028998279**. This is exactly the same IMEI number found in the CDR of A4's phone connection. From this, it is obvious that the IMEI number found in Exhibit P120 as that of MO24 is only a mistake and it might be of the said Nokia phone. Anyway, from the above discussion it can easily be concluded that MO24 was used by the subscriber of MO24(a) SIM card during the said period to avail the cell phone service. From the evidence on record, the only possible inference is that it had been used by A4, from whom MO24 was seized and on whose name MO24(a) SIM card was taken.

(74) **Previous user of MO15 phone by A5 :-** It is already found that MO15 mobile phone and MO15(c) SIM card of BSNL had been seized from A5 at Kanakamala on 02.10.2016. The prosecution places heavy reliance on the telegram chats found in MO15 mobile phone in which there are alleged conversation between PW13 and A5 and conversations allegedly made between A5, A1 and A2 etc. Through the evidence of PW77, the Nodal Officer of BSNL, it is proved that the cell phone service through the said SIM card was availed by A5. On a comparison of the Evidence of the Cyber Forensic Expert, who traced out the IMEI number of MO15(c) SIM card, and MO80 CDR pertains to the said cell phone service, it is evident that MO15(c) SIM card was inserted in MO15 mobile phone during the period 01.03.2016 to 02.10.2016. Thus, MO15 is proved to have been used by A5 during the said period.

(75) **MO21 Tablet and disclosure made by A4 – Relevance** : It is strenuously argued by Shri. V.T. Reghunath, the learned counsel appearing for A4, that there is no guarantee that MO21 tablet was used by A4. There is no proof of ownership, unique documents like SIM card, CDR or other evidence to connect him with the user of the said tablet, it is urged. He strenuously argued that apart from A4, his brother, his mother and an old lady were also residing in that house and hence it is not possible to infer that the tablet was exclusively used by the A4. It is true that the prosecution considers MO21 tablet as important piece of evidence as most of the chat conversations in the group were found in this tablet. It is submitted by the learned Prosecutor that there are photographs and other personal data of A4 in this tab. Even when the sure test applied above to ensure the pre-existing connection with the respective accused person and the device seized from him is not as such possible in the case of this tab, there is one important evidence to link the exclusive connection of A4 with MO21, i.e., the disclosure statement of A4.

(76) As per the evidence of PW10 and PW84, the said Samsung tablet was seized from the residence of A4 and it was taken to a nearby police camp by PW84. The evidence of PW2 and PW84 makes it further clear that A4 reached the camp in compliance of the notice issued to him by PW84. It is proved from their deposition and Exhibit P13 (a) observation mahazar, that when A4 was questioned by PW84 in custody, A4 disclosed that “..... had telegram chats with my associates in the Samsung tab If the tab is opened before me, I can show you that telegraphic chats”. They also deposed that when MO21 tab was given to A4 after unsealing, he opened the same using a secret number which is marked as Exhibit P13(b), and then A4 showed the telegram application, a group named ‘Darul Fikr’, a

Malayalam telegram channel named 'Khilafa', chats by Adam Ahammed with Muthukka, Abdul Azeez, Bilal, and also a video in that tablet.

(77) Both these witnesses were subjected to lengthy cross examination by the learned counsel for A4. Though it was elicited that when PW2 gave previous statement to the Investigating Officer, he made slight deviation as to certain areas pertaining to the above matter, the witness further explained that he stated almost equivalent matters to the Investigating Officer in English language and the difference is only in the formal expressions in Malayalam.

(78) When it is proved through the independent witness and the police officer that A4 had opened the tab by correctly applying the secret number and he made such a statement as well, the said evidence is sufficient to show that A4 has exclusive knowledge regarding the matters found inside the tablet. Further, when Ext.P121 is inspected in open court, it is found that there are several photographs of A4 in MO21 tab seized from his possession. It is also relevant to note that in the private communication made by A6 (cousin brother of A4) with A1, there is unmistakable reference to A4, seemingly as the person from whom A1 got information about the inclination of A6 as to ISIS. Evidence of PW21 that A4 spoke to him about things favourable to ISIS ideology and the telephone calls made by A4 to other accused persons are matters ensuring the accuracy of the prosecution case, though they do not directly corroborating the evidence discussed above.

(79) **Section 27 of the Evidence Act and recovery of digital data:** A question may tangentially arise that whether the said disclosure statement of the witnesses is admissible under section 27 of the Indian Evidence Act. First of all, whatever things unearthed from digital devices or e-mail of a

person are even otherwise admissible in evidence, just like matters recovered by a police officer in a search. If it contains some incriminating materials, it will be admissible under section 21 of the Evidence Act. The only question then arise is the reliability of the official who said to have seized it. In this case, all the seizures were made in the presence of independent witnesses and they clearly supported the prosecution. By resorting to section 27, what could be additionally let in evidence is the *information* furnished by the accused in custody, which distinctly relates to the materials so found, if that material was otherwise not accessible to the Agency.

(80) As regard to section 27, we are familiar with the situation where an accused makes a disclosure statement by which he reveals a secret place at which he had buried a weapon of offence or other material, which may have some connection with the crime. There, we have no difficulty to accept that when a discovery was made in consequence of the information received from the accused, the information which relates distinctly to the fact thereby discovered is admissible in evidence. What is relevant under section 27 is the knowledge of the accused as to the place where the material object was found. The difference in the present situation is only that the place he pointed out is in the electronic world. Except that difference, all other ingredients of the said section are very well present here. Pointing out a file existing within a particular folder or place provided in an electronic gadget is just like pointing out a folder or container kept hidden in an almirah in the possession of the accused person.

(81) When the electronic data discovered in consequence to the disclosure made by the accused has some connection with the crime, the information so furnished by the accused, which relates distinctly to that

discovery is indubitably relevant. Law does not insist that the 'object' found must be a 'physical object', though it may not be a physiological fact. A thing existing in the electronic world is also an 'object' for the purpose of section 27, and it is also a 'fact' within the meaning of Section 3 of the Evidence Act, as it is perceivable by senses. The 1st illustration to the said definition clause is also perfectly matching with it. A video clip or conversation found inside the tablet is certainly such a 'fact', and when the prosecution can show that the video or the datum has some nexus with the offence committed, it becomes an important piece of evidence. When anything incriminating the accused is found from a digital device solely traceable to his knowledge, the 'discovery' there is not the *digital device* as such, but the *knowledge* of the accused as to the place where the material object (here, it is digital data) was kept, and the *material object* itself, in view of the settled law.

(82) The above finding is fortified by the law declared in **Abdul Rahman Kunji vs. State of West Bengal (2016 CrLJ 1159)**, by the division bench of the Hon'ble Calcutta High Court, wherein it was observed that (paragraph 62) when the accused has revealed his e-mail identities and passwords, and thus the e-mail was accessed by the police and the contents were printed out, they are admissible in evidence and his disclosure comes under section 27 of the Evidence Act. Referring to the decision in **Hussein Dastgir** case (supra) etc., Shri.Shereef and Shri. Noushad contented that discovery of the fact must be the direct outcome of the information given by the accused and since the Agency could have opened the Internet enabled accounts even otherwise by using high end technologies, section 27 has no application in this case. Such issues depend on the reliability of the investigation officer and it has no bearing on admissibility of the evidence.

If his version is believable, the discovery i.e., the knowledge of the accused as to the place where the material was kept hidden, is the direct outcome of the information he had given.

(83) Thus, it can safely be concluded that the knowledge of A4 as to the password used to unlock MO21 and his ability to point out the place at which the relevant objects like chat convention or other digital evidence were found, strongly signifies that MO21 was in the exclusive user of A4. In this case, the device was found locked with secret numbers, and since A4 was able to unlock it by applying those numbers correctly, the element of authorship of concealment is also evident, though it is not the *sine qua non* for attracting section 27 of the Evidence Act. In this context, it is relevant to note that when A4 was asked to explain about the incriminating circumstances found in the prosecution evidence as relates to the recovery of MO21, he did not furnish any information other than a bare denial that it was not seized from his possession (Question No. 136 in the statement recorded under section 313 of the Cr.P.C). When it is proved that MO21 was seized from the residence of A4 and he opened it by applying the secret number, his inability to make any plausible explanation in the above matter is also suggesting that, other than A4 nobody else in his house had any responsibility to the materials found in MO21.

(84) Apart from the mobile phones, certain other electronic devices were also seized from the possession of the accused persons either at the time of their arrest or later in the search conducted at their residence or work place, but a detailed discussion of those items is unnecessary, in view of the evidence retrieved from the said mobile phones and tablet.

(85) Evidence to ensure relationship of A6 with the data found from MO1:- MO1 mobile phone is seized from the possession of A6 at

Kanakamala. MO1(a) SIM card was also found inside it, the prosecution contends. From this mobile phone, PW92 has extracted a personal chat conversation between two persons. The prosecution alleges that it was made by A6 and A1. The prosecution further alleges that A6 made personal chat conversation with A2 as well. Even though it is not evident from the CDR of MO1(a) SIM card that A6 had used MO1 mobile phone at any previous stage, the guarantee as to the genuineness of data retrieved from his phone can be ensured otherwise. From the evidence of PW61, PW80 and PW87 it is proved that when A6 made a disclosure statement while in custody as to the user name and password of his Facebook account, PW87 extracted its contents and downloaded and transcribed the data found in that account to MO65 DVD, after taking screen shots of each page and by preparing Exhibit P90 proceedings. Even though these witnesses were challenged during cross examination, there is no material to discredit their version as to the discovery made by PW87 in respect of the contents of Facebook account of A6. The Facebook account is with the original name and initials of A6. MO65 DVD has been sent to C-DAC and it is clear from the evidence of PW92 that he did not find any discrepancy or 'mismatch' in its contents. Further, as proved through PW 80, the Facebook account of A6 contains his personal details, including his mobile phone number, which is proved through PW86, the Nodal Officer of Ideal Cellular Ltd, and from MO113 Customer Application Form.

(86) To sum up this discussion, the way in which the prosecution proved the previous user of each of the phones by the respective accused person (other than A6), can be tabulated as follows:

Evidence to show that respective devices seized from the accused persons have been in their use prior to their arrest

MOs Seized from possession of Accused persons	Mobile No. and SIM No. as per Customer Application Form	Serial No. of SIM (ICCID) Found by Expert & relevant page of report	IMEI No. traced out by expert & relevant page of report	IMEI No. found in CDR & period used	Subscriber's name as per Customer Application Form (CAF)
Manseed (A1) MO8 Phone MO8(a) SIM Card	Mobile No. 9633681450 8991950000 1114861618	8991950000 1114861 (Page 5 of Ext.P120)	3550250 62105018 Page 5 of Ext.P120	3550250 6210501 30/09/2016 to 02/10/2016 (CDR MO.73)	Manseed (CAF MO74)
Swalih (A2) MO11 Phone MO11(a) SIM Card	Mobile No. 9884838935 8991400212 34232123F	8991000900 705205295U 8991853412 1522511068 (Page of 6 Ext.P120)	8690870 22718222 Page 16 of Ext.P120	8690870 2271822 01/03/2016 to 02/10/2016 (CDR MO76)	Swalih (CAF MO77)
Rashid Ali (A3) MO4 & 5 Phones MO5(a) SIM Card	Mobile No. 7373734622 8991421000 8330046496	8991421000 8330046496 (Page 7 of Ext.P120)	3565200 52564470 Page 6 of Ext.P120	3565200 52564470 24/08/2016 to 02/10/2016 (CDR MO98)	(SIM given to A3's brother PW48, by Acinus Pharma) (CAF Ext.P76)
Ramshad (A4) MO 24 and MO 24(a) SIM	Mobile No. 9995716060 8991724043 481577037	8991724043 4815770375 (Page 11 of Ext.P120)	862752028 998279 (Noted by the Court)	86275202899 827 01/03/2016 to 02/10/2016 (CDR MO82)	Ramshad (CAF MO83)
Safvan (A5) MO15 Phone & MO15(c) Sim	Mobile No. 9562626662 8991723093 481440880	8991723093 481440880 (Page 9 of Ext.P120)	9115105 02703081 Page 7 of Ext.P120	9115105 0270308 20/08/2016 to 02/10/2016 CDR MO82	Safvan (CAF MO81)

How the authorship of chat conversations found in the seized material objects relates to the respective accused persons :

(87) A thorough analysis of conversations made between the participants is very essential to ascertain their criminality. But this can be done only when it is proved that the participants in the group chats (or the individuals in personal chats) are the accused persons themselves. Having found that the mobile phones and other digital devices were seized from the accused persons and they were in their possession for a quite long period prior to their arrest, the next aspect is the real identity of the persons who seemingly made the respective conversations. The prosecution alleges that each of the accused persons used fake names to make the conversations with the definite intention to cover-up their identity. According to them, important fake names used by the accused persons are as follows :

A1	Mansi Buraaq/ Omar-Al-Hindi/ Muthukka/ Hud Hud/ ID225501527/ Jameel Tvm/ Dhulfuqaar333
A2	Bilal/ Yusuf/ Abu Hasna/ Yunus/ Yunus Salim
A3	Bucha/Abdul Azeez/Abu Basheer
A4	Adam Ahammad/ Amu/ Abu Muad
A5	8 GB/ Rayyan/ Kazhcha/ Shaas
A6	Cheppu/ Wanderer111
A7	Abu Ayisha/ Sameer Ali/ Kochappa
A8	Ibnu Abu Al Indonesi/Moinu Islam/Ibnu Abdulla

(88) The chat conversations retrieved from various devices show that the display name used by each of the participants is different from the actual names of the accused persons, except in the case of A6. There are

also several participants in each group and thus, unless the identity of the authors of these conversations is proved, it is not possible to fix the responsibility of the accused persons as to the respective statements. Apart from the display names, the participants address each other with nicknames. They call it as '*Kuniya*'. In addition, they use code names as well. For illustration, when the display name shows Bilal, he may be addressed as '*Yusuf*' by the other participants. He may also be called as Abu Hasna. In Exhibit P121(c) telegram group chat named '*Knowledge*', there is a discussion between the group members as to the manner in which they should use code names or *kuniya* names. On 28.08.2016, person with ID No.225501527 (for short '*527*') declares that Rayyan would be the code name of ID No.167714916. He further commands the other members to use only their *kuniya* names in the discussion as well as in their actions. He further said that *kuniya* name is different from code name. Then he said "I will be Muthukka". He also declared that Abu Muad is '*Amu*' and Abu Basheer is '*Bucha*' and Rayyan is '*Kazcha*'. Later, he cautioned all that even when they meet in person, they should not share their personal name or details. Then a participant named Bilal clarified that '*Yusuf*' is not his *kuniya*, but code. The above said complex nature of their communication calls for the following discussion to clarify who uses which name.

(89) The evidence of PW100 and PW76, who are approvers in this case, is really favourable to the prosecution to show that the accused persons have used the nicknames found in the telegram groups. But it is difficult to straight away accept their oral evidence as such, for the obvious reason that in all the telegram groups, members were very keen not to reveal their identity to anyone, even when they actually meet. Taking into account the law declared in the decisions cited by the learned defence

counsel as regard to the reliability of evidence of approvers, it is better to endeavour for establishing the identity of the accused persons through other modes, and if it is found that there are sufficient evidence to corroborate the version of the approvers on such material particulars, their evidence can be acted upon.

A1 and the ID/names Mansi Buraaq, 225501527, Dhulfuqaar333, Muthukka, Hud Hud and Jameel Tvm :

(90) It is in fact not in dispute that Shri. Manseed (A1) has a Facebook account with ID 'Mansi Buraaq'. This is, anyway, duly proved by the prosecution by leading evidence. MO22 Huawei phone is of PW3, the sister of A1. PW3 stated that the said phone was seized from her possession by NIA. When MO22 was forensically analysed by PW92, it is revealed that PW3 had made chat conversations with Mansi Buraaq (Exhibit P125(a) series personal chat with No. 22). The chat conversation is between the ID named Maharunnisa Shafeeq (PW3) and Mansi Buraaq. Maharunnisa addresses Mansi Buraaq as 'Ikka' and they discussed about their mother and many other personal matters. Mansi Buraaq addresses Maharunnisa as 'Vave'. PW3 admitted this fact during trial. From this conversation and the other attending evidence it is obvious that Mansi Buraaq is the Facebook ID of A1. Further, Exhibit P121(j) series are the personal chats extracted from the Facebook account of A6. There is a long chat conversation between A6 and A1, as per Exhibit P121(j). On 22.09.2016 at 10.48 p.m, **Mansi Buraaq** revealed his real name as **Manseed bin Mahamood**. He also said he was working with Qatar Government and his wife is a revert Philippine. From the conversations found in the other groups, it is clear that they use the word 'bin' as equivalent to 'son of'. PW9, Shri. Mahmood is the father of A1. Therefore, it is clearly proved that '**Mansi Buraaq**' is the Facebook ID of A1.

A1 has admitted in his statement given under section 313 of Cr.P.C that he has a Facebook account as '**Mansi Buraaq**'.

(91) Nevertheless, it is forcefully argued by Shri. Mohammed Sabah, the learned counsel for A1, that there is no evidence to link A1 with the chat conversations or offensive discussions, and the prosecution has proceeded on mere assumptions and surmises. It is his submission that there is nothing on record to show that A1 is Muthukka or he used the ID 527. It is also not in evidence that he is Omar-Al-Hindi, Jameel Tvm or Hud Hud, the learned counsel strenuously submitted. According to him, the very fact that no offensive materials were retrieved from the phone seized from A1, exposes the prosecution as to their inability to link A1 with the spiteful statements. Even if such materials were found in any of his devices, or found as generated from his Facebook ID, it should have been done by a person named Jameel, who was working along with him in the Qatar Guest Centre, the learned counsel urged.

(92) **Identity of A1 as ID 225501527:-** At first, whether the prosecution has succeeded in establishing the identity of A1 as the person who used the ID 527 can be looked into. It is concluded above that A1 had used a Facebook ID '**Mansi Buraaq**'. On 22.09.2016 at 11.19 pm, in his discussion with Jasim NK (Exhibit P90 and MO 65 series), A1 declared that he is with Dowlathul Islam (another name for ISIS) and that a large group supports him. He then declared that some practical movements were about to happen and that there would be a meeting in the next week, the time and location of which would be informed to Jasim later. A1 further states that he would give Jasim a kuniya name. At one point (11.36 PM), A1 reveals an important aspect. He said that **Dhulfuqaar333** is his ID. Most significantly, in Exhibit P121(i) personal telegram chat between the user of

ID 527 and 8GB/Rayyan, the user of ID 527 declares that he has another ID as 'Dhulfuqaar333'. Above all, in Exhibit P149 series chat in the telegram group named 'Darul Fikr', when Bilal (A2) asks that how the participants would identify each other as they were using ID like 8GB, the person with ID 527 stated that "I am Dhulfuqaar33". These vital revelations unequivocally prove that the person who uses the ID Dhulfuqaar333, Mansi Buraaq and 527 is nobody other than A1.

(93) Still, if there is any doubt as to the unity of these identities, it can be displaced easily by taking note of another unique feature in the said communications. In their Facebook chats, when A1 asked A6 to create a telegram ID and thereafter revealed his own ID (presumably in telegram) as "Dhulfuqaar333", Mansi buraaq wrote "**all smoll letters**", when it was seen that the first letter appeared with capital letter. At 11:17 pm, he again writes "I am a **smoll** dhaiya". Now we can turn to ID '527'. When the ID 527 chats with 8GB/Rayyan in Exhibit P121(i), he said 'Dhulfuqaar333' is his telegram ID. When it was noticed that first letter of the ID happened to appear in capital letter, he again sent the same message correcting the first letter to lower case (small letter) and further clarified that "**all is smoll letters**". This repeated mistakes in the spelling of a common (and *small*) word corroborates the above finding that Mansi Buraaq, who is A1, is using the ID 527 in telegram. It is also proved that he is using the ID dulfuqaar333.

(94) **A1 as Muthukka, Omar-Al-Hindi and Hud Hud** : It is much easier to infer that A1 is also known as 'Muthukka'. On 28.08.2016 at 09:15:37 PM, in 'Knowledge' group [Ext.P121 (c)], ID 527, which is now proved as A1, declared that "**I will be Muthukka**". Similar thing can be found on the chat conversation in the very same group on 10.09.2016 at

4:21:07 p.m. Here, the person using the ID 527 unquestionably declares that “**Its me Muthukka**”. This is evident in Exhibit P148 series chat in the group named ‘The Gate’ when Bilal asked on 09.09.2016 at 2:10:37 p.m. that “Muthukka..... comment kando”? Then ‘527’ replied that “Yep kandu”. In Exhibit P121(i), when **Hud Hud333** made personal telegram chat with 8GB, 8GB addressed **Hud Hud333** as ‘Muthukka’ and **Hud Hud** replied to these chats.

(95) There is also clear and believable oral evidence in this regard, which is also corroborated by chats found in the electronic device. Exhibits P29 and P121(i) series is a personal telegram chat retrieved from MO15 mobile phone of A5. Exhibit P29 is a chat conversation between a person using the ID ‘8GB’ and PW13. PW13 was using an ID ‘Hope’. When the person nicknamed as 8G asked PW13 that whether he was contacting him as demanded by ‘Muthukka’, PW13 readily agreed. When PW13 asked the other person that, was he not Rayyan, the person nicknamed as ‘8GB’ admitted it. As a result of their discussion, both of them decided to meet together and accordingly, they fixed the venue and met together at Mavoor Road junction. Apart from the chats, these facts are clearly testified by PW13, when he was examined during trial. PW13 deposed that he received communications from a Facebook ID named ‘Omar-Al-Hindi’ at first and later, from an ID ‘Hud Hud’. He further testified that one day, the said person informed him that one Rayyan would meet him, and at the time of meeting Rayyan would say that he was meeting PW13 as asked by Muthhukka. It is further deposed by PW13 that he met Rayyan as informed by Omar-Al-Hindi/Hud Hud. During trial, PW13 identified A5 as Rayyan.

(96) The said statement has to be read along with another piece of evidence. In Exhibit P121(c) chat conversation in ‘Knowledge’ Group, there

is a discussion between A1 (in his ID 527), Bilal and some other persons. Then A1 said that the target was fixed as Ramesh and then what was required is information about him. He further stated that the duty to collect information about Ramesh was assigned to somebody else and Rayyan would follow up the matters with him. He referred to their own previous chat conversation wherein he declared that he would introduce a person located at Kozhikode who would be able to observe the target. A1 further said that Rayyan (A5) would receive intelligence from this person, who is an 'outsider' but a helpful person. These chats and the evidence of PW13 clearly show that the person who made Rayyan to meet the 'outsider' is A1, and the 'outsider', who is PW13, was asked to meet Rayyan with a specific message (as asked by 'Muthukka') by Omar-Al-Hindi/Hud Hud, who must be none other than A1. Significantly, in Exhibit P121(d)(11) (which is retrieved from MO11 mobile phone seized from A2), there is a conversation on 12.09.2016 at 01:07:38 hours, where A1 (in ID 527) refers to Omar-Al-Hindi and states that when that account is lost, all contacts had been lost.

(97) The oral evidence of PW75 also fortifies the above said evidence. He deposed that during 2016 August, Mansi Buraaq chatted with him and contacted him over net call. PW75 said that he was earlier in a Facebook group named "Sahayikal", wherein Ramshad, **Omar-Al-Hindi**, Swalih and some other persons were members. He further deposed that when **Mansi Buraaq** contacted him in net call, he identified him as 'Manseed' and also that he was **Omar-Al-Hindi**. Exhibit P135(a) series Facebook messenger chat retrieved from the Motorola mobile phone of PW75 corroborates that he made conversation with **Mansi Buraaq** in Facebook.

(98) PW64 also gave evidence against A1 almost in tune with the

version of PW75, and revealing the real identity of A1 as Mansi Buraaq and Hud Hud. He deposed that a person named Mansi Buraaq was his Facebook friend and both of them used to chat through Facebook messenger and Mansi Buraaq revealed him that he was actually Mahmood (His father's name is Mahamood)) from Kannur and his wife is a Philippine and that he was working as Islamic Propagator in Qatar. He also said that, he was introduced to the telegram group Bab Al Noor with a secret ID "Abu Abdullah Assijn" and that A1 contacted him using another name 'Hudhud'

(99) **A1 as 'Jameel Tvm'** : In Exhibit P95 series telegram group Bab-Al-Noor, on 31.08.2016 between 03:56:32 p.m. and 4:10:03 p.m., one person asked that who is **Jameel Tvm**. Then Abdul Azeez replied that it is '**Muthukka**'. More assertively, the person with ID 527 (A1) replied that 'I am Jameel TVM' ("*Jameel Tvm, ath ikkayanu muthe*"). Therefore, the interconnection between Mansi Buraaq, Manseed bin Muhammad, Muthukka, Hud Hud, ID 527, Omar-Al-Hindi and Jameel Tvm is clearly established.

(100) There is another important evidence to connect A1 with the telegram groups and chats. Exhibit P140 report and P141 hard disc contain two screen shots found in the mobile phone of PW76, which refers to personal telegram chats made between himself and Abu Ayisha (A7). There is an unmistakable reference to A1 by PW76, with his real name 'Manseed'. This aspect will be discussed later, as the said conversation has greater importance as to the identity of A8.

(101) Thus, I find no force in the contentions raised by Shri. Sabah. In order to show that A1 uses the said names, the learned Public Prosecutor narrates dozens of instances in his argument note (Page No. 78 to 82), including the testimony of PW76 and PW100 (approvers). As the

discussion made above conclusively established that A1 uses the said titles, all those instances are not separately dealt with.

(102) There is also no merit in the contention that those offensive chat conversations were made by one Jameel, who had worked along with A1. First of all, there are many disclosure statements made by A1 (about his social media accounts and their secret passwords) to the Investigating Officer and on the basis of such statements, materials in various Facebook IDs such as Omar-Al-Hindi, Jameel Tvm, Ahammad Jalal etc. were recovered. If it was done by another person wrongfully using the identity of A1, he would not have been able to furnish such information, including the secret passwords. Further, it is not palatable to common sense that a person would part with his mobile phone to a co-worker for several days and that he would make thousands of conversation with other persons without the knowledge of the owner of the phone.

(103) Apart from all the above evidence, the contention raised by the learned counsel for A1 is unacceptable for another concrete evidence in the form of *voice identification*. Exhibit P99 series contains voice clips alleged to be of A1. PW101, an expert in the Forensic Science Laboratory, Thiruvananthapuram submitted Exhibit P161 report stating that, on a comparison of the admitted voice of A1 (which was collected by PW 94 on the directions of this court) and Exhibit P99 series voice clips, she found that they are the *most probable voices of A1*. Besides the evidence of the expert, these voice clips were identified as that of A1 by several other witnesses during trial, including PW7, PW64, PW75 and PW100. PW3, the sister of A1, also deposed that Exhibit P99 voice clips have similarity of the voice of her brother, A1. As contended by Shri.Sabah, voice identification may not have achieved the status of an absolute science among scientific

community. It is also pointed out by the learned counsel that the Hon'ble Supreme Court in **N.D. Paradhkar vs. State of Maharashtra (MANU/SC/0293/2011)** made a note of caution that when the witness who knows previously that he was called upon to identify the voice of a specific person, and yet, the voice of that person alone was played during the trial, he could not be believed.

(104) In this case, there are many other circumstances strongly corroborating the findings of the expert and opinion expressed by the witnesses, who have close acquaintance with the A1. One of the voice clips in Exhibit P99 series is in the form of a speech. The exact text of that speech was posted by A1 using his ID 527 in Exhibit P95 series telegram chat in Bab-Al-Noor group on 08.09.2016 at 07:46:13 p.m. There is yet another convincing evidence that this voice clip was retrieved from MO8 phone seized from the possession of A1 at the time of arrest. Further, A1 has declared in Exhibit P148 series telegram chat in the group 'The Gate' on 08.09.2016 at 03:15:53 p.m., that he had created an audio. The above discussion makes it clear that A1 uses the following IDs/names :- **Manseed Buraaq, 225501527, Muthukka, Hud Hud, Jameel Tvm and Dhulfuqaar333.**

Identity of A2 as Yusuf, Bilal or Abu Hasna

(105) As per the prosecution, A2 Swalih Muhammad uses the names Bilal, Yusuf and Abu Hasna in various groups. There is no difficulty to arrive at a conclusion that **Bilal** is **Yusuf**. In Exhibit P121(c) series telegram group named 'Knowledge', on 28.08.2016 at 09:26:53 p.m., Bilal himself declared that "I am Yusuf". He made it further clear at 09:25:50p.m. that 'Yusuf is not my kuniya, but it is my code'. The real question is, is **Bilal** A2 or not.

(106) In the telegram group 'Gate', on 17.08.2016, Bilal himself said that he is Abu Hasna. In Exhibit P121(d)(13), when one Abdul Azeez made a personal chat with Bilal at 07.09.2016 at 07:27:21 p.m., Abdul Azeez addresses Bilal as Abu Hasna and further replies the query of Bilal as to the insufficiency of 2GB network. From this, it is obvious that Bilal has another name as 'Abu Hasna'.

(107) Exhibit P121(b) is the conversations pertaining to 'Taswib', retrieved from MO11 mobile phone of A2. In this group, on 09.09.2016, Bilal asks A1 that how they would find money for executing their plan. He further clarifies with regret that he never intended to ask money but, he was forced to do so as his financial condition is weak. Bilal makes it clear that the amount is necessary to arrange a rented vehicle. Later, on 16.09.2016, ID 180109386 (A7) informs that he asked Ibnu Abdulla to sent around Rs.15,000/-. He further said that the person who should collect money has to make personal chat with Ibnu Abdulla.

(108) On 17.09.2016, A7 asked Bilal to chat with Abdulla, as Abdulla would sent money through Western Union. Then Bilal replied that he did not know how to receive money through Western Union. Later, Bilal agreed that he would proceed with Western Union. On 23.09.2016, Bilal informed the group members that he contacted Ibnu Abdulla. On 27.09.2016, when A7 asked Bilal whether he received money, Bilal informed that he received it. Later, he added that he received Rs.18,000/-. After a while, he informed that he arranged the vehicle as well.

(109) Exhibit P105 and MO33 series documents are related to money sent by Moinudeen Parakadavath through Western Union Money Transfer, to Shri.Swalih Muhammed (A2). These documents are proved through PW69 and PW27. Though A2 denied receipt of money when he

was questioned under section 313 of Cr.PC, evidence of PW27 remains unchallenged. The document containing purported signature of A2 is also not challenged. PW27 and PW69 asserted that money would be given to the customer only after ensuring identity. Their evidence unequivocally proves that Rs.18,000/- was received by A2 on 24.09.2016, after producing his identity proof. As per the prosecution, Ibnu Adhulla is Moinudeen Parakadavath. This evidence demonstrates that Bilal is no one other than A2, as this is evident from the chat conversations. Another important piece of evidence in this regard is his own chats found in Exhibit P121(d)(4) personal telegram conversations with Abu Al Indoneshi. On 30.09.2016 at 08:31:58 p.m., Indonesi asks Bilal his telephone number. Bilal gives 9884838935 as his number, followed by a question that whether Indonesi wants to call him. MO77 original customer application form proved through PW74, the Nodal Officer of Bharathi Airtel, makes it clear that the subscriber of this telephone number is A2.

(110) The prosecution adduced another corroborative evidence to show that Bilal is A2. PW20 was examined to prove that on 07.09.2016, his mother Nabeesa died at the age of 92 and Nabeesa is the grand mother of A2. He also deposed that she sustained fracture to her leg. Through PW90, the Panchayat Secretary, Exhibit P39 death certificate of this Nabeesa was also proved by the prosecution. In Exhibit P148 series chats in telegram group named 'The Gate', Bilal communicates to others on 09.09.2016 at 12:53:28 a.m. (08.09.2016 at 07.23 p.m., in Indian time) that his grand mother, aged around 90 years, died in the previous day and that she had a fracture to her leg. The above discussion leads to an irresistible conclusion that A2 is **Bilal, Yusuf and Abu Hasna**.

Identity of A3 as Abdul Azeez or Bucha

(111) As observed in the beginning of this point, on 28.08.2016 at 09:23:41 p.m., A1 (using his ID 527) declared in Exhibit P121(c) Knowledge group that 'Abu Basheer will be Bucha'. In Exhibit P148 series telegram group named 'The Gate', Exhibit P149 series telegram group named 'Darul Fikr' and Exhibit P95 series Bab-Al-Noor, the ID with display name 'Abdul Azeez' replies when others address him as 'Bucha'. For illustration, on 05.09.2016 at 08:45:12 p.m., when A1 asked that 'Bucha, please contact Yusuf.....', Abdul Azeez replied 'OK'. This makes it clear that **Abdul Azeez is Bucha**. Now the task is to verify whether Abdul Azeez is A3.

(112) Evidence of PW100 is also relevant to prove the real relationship between A3, Bucha and Abdul Azeez. But PW100 is an approver, and hence it is safer to seek corroboration for his version. At the same time, evidence given by PW100 goes to the extent that he went to Coimbatore on 22.09.2016 along with A4 and met A3, though he was actually expecting Bucha, pursuant to the chat conversations. It is contented by Shri.Arjun that this statement should be given credence, as it is corroborated by CDR of those persons.

(113) It is already proved that MO4 mobile phone was seized from the possession of A3. A personal telegram chat between Abdul Azeez and Safran was extracted from this phone and it is marked as Exhibit P121(f)(3). On 09.09.2016 at 04:30:47 p.m., Safran asks Abdul Azeez to sent his number with which he uses telegram. Safran clarified that, without having the personal phone number, he could not make Abdul Azeez an 'admin' (in the group). Then Abdul Azeez at 05:08:32 p.m. furnished his number as **7448411815**. Exhibit P121(f)(1) is also a series of personal

chats retrieved from MO4 mobile phone of A1. The said chats were made in between Abdul Azeez and Abu Ayisha (A7). On 19.09.2016, Abu Ayisha asks Abdul Azeez to create a Facebook account for him. He gives necessary details such as display name - Sameer Ali, place of birth – Kannur, Kerala and present location as Darul Islam. At 12:15:49 p.m., Abdul Azeez replied as follows :- “Facebook account created. Name – Sameer Ali. Fake No. - **7868871642**, Password – 8148445900”. A3 has some connections with this number and the number furnished by Abdul Azeez to Sarfan. The following discussion will unfurl this connection.

(114) Prosecution has examined the Nodal Officer and the persons in whose name the said telephone numbers were actually subscribed. The number **7868871642** is subscribed in the name of Shri.Manokaran. He is a dumb and deaf person. With the aid of interpreter, he was examined before the court as PW98. When MO87(a) customer application form for the said number was shown to him, he said that the photograph affixed on it was his own and the copy of the ID was also in his name. But he asserted that he did not obtain a phone connection as per the said application. Through PW86, the Nodal Officer, Vodafone, the prosecution proved that mobile number **7448411815** was applied in the name of one Ramachandran as per MO102 customer application form. From MO101 CDR in respect of the said phone number and from MO86 CDR in respect of the other number, it is obvious that both these SIM cards were used in MO4 and MO5 mobile phones which were seized from the possession of A3 at the time of his arrest, for a considerable period prior to the date of arrest.

(115) There is more evidence to show the real identity of ‘Abdul Azeez’. The evidence adduced by PW92 and Exhibit P120 report reveal that

these two numbers are saved in the said phone as 'Fake Thaymia' and 'Fake Vod'. MO4(a) and MO4(b) SIM cards pertaining to that numbers are seized from the possession of A3 at the time of his arrest from Kanakamala. As discussed above, the SIM card issued to the brother of A3 is also seen used in the said phones for a considerable period. The evidence of PW92 further shows that apart from those two numbers, three more mobile numbers were seen saved in MO5(b) SIM Card seized from A3. PW95 to PW97 were examined to prove that they did not apply those mobile phone connections, even though the Customer Application Forms were seen submitted in their name. CDR of one of those numbers shows that it was in contact with the mobile phone number of A2. The number taken in the name of PW95 is seen in contact with the number of A4. All the five SIM cards for the corresponding phone numbers have been thus proved to be obtained in fake identity, whereas all of them were seized from A3. It is now relevant to note that 'Abdul Azeez' has declared in 'Gate' that he has so many fake numbers in his possession. (09.09.2016 at 12:05:51 a.m.).

(116) When the house of A3 was searched by PW102 in the presence of PW34, MO36 series to MO46 series documents were seized from there. It is proved by the prosecution that these documents contain literature relating to ISIS, flag of Jihad, types of Kufur etc. Cross examination of PW102 and PW34 was uneventful and thus there is no reason to suspect the search and seizure. It is relevant to note that Abdul Azeez in his conversation in the social media groups has mentioned about similar matters. What emerges from all these facts is that A3, from whom MO4 and MO5 were seized along with the above said SIM cards, was using those phone numbers and his act of furnishing those numbers as his own reveals that he is **Abdul Azeez**.

A4 as Adam Ahammad or Amu

(117) There are many materials to show that A4 is Adam Ahammad. PW21 identified A4 during the trial and deposed that he contacted A4 on several occasions and both of them met together as well. PW21 further testified that he contacted A4 through telegram app. Exhibit P121(l)(15) is a chat conversation retrieved from MO21 tablet seized from the possession of A4. As discussed above, this device was digitally unlocked by A4 himself and he showed several chat conversations found inside MO21 and it was found admissible under section 27 of the Indian Evidence Act. In the said chat conversation, a person with display name Ameen Rashid (PW21) asked Adam Ahammad that is he not **Ramshad**. Then Adam Ahammad replied with some smilies expressing wonder and a poker face with covered mouth.

(118) Next item of evidence in this regard also comes from Adam Ahammad himself. In Taswib group (Exhibit P121(b), on 28.08.2016 at 10:41:59 p.m., Adam Ahmmad stated that his brother is admitted in hospital. Prosecution examined PW33 to prove that one Master Farhad, Baby of Ramla, Nangeelamkandy, Kuttiyadi was admitted in Anna hospital, Kuttiyadi on 28.08.2016 and was discharged on 29.08.2016. He produced Exhibit P53 treatment records. Mother of A4, Smt.Ramla was examined as PW41 and she also deposed that her younger son Farhad was admitted in Anna hospital Kuttiyadi during the said period.

(119) Learned Public Prosecutor has brought to my attention another circumstance showing the real identity of Adam Ahammad. Exhibit P121(l)(1) is the personal telegram chat between Adam Ahammad and Abu Ayisha. On 22.08.2016 at 05:28:29 p.m., Adam Ahammad asked Abu Ayisha that whether one Shiyas was with him. When Abu Ayisha replied

positively, Adam Ahammad replied that he should convey greetings from Kuttiyadi ('Oru salaam parayoo from Kuttiyadi'). It is in evidence that A4 resides at Kuttiyadi.

(120) Exhibit P155 is a personal WhatsApp chat retrieved from MO24 mobile phone of A4. It is between a WhatsApp ID with number 9995716060 with display name 'RemShadNk' (actual name of A4 is Ramshad.N.K) and a person with number 97430433832 with ID Ali Ibn. It is proved through the evidence of PW77, the Nodal Officer BSNL, and MO-83 Customer Application Form, that the mobile number 9995716060 was subscribed by A4. At the end portion of a very long chat conversation between them, A4 informed Ali Ibn that "They are in meet, Yusuf, Muthukka, Bucha etc." He further said that something would happen then.

(121) It is to be remembered that there is evidence to show information about the meet and the members of the meet were top secrets. When A2 informed these matters to Adam Ahammad through a personal chat (Exhibit P121(l)(13), retrieved from MO21 phone of A4), Adam Ahammad replied that he was injured and hence he might not be able to attend the meet. When A4 was arrested, he was seen injured and all those chats were found in his devices. Besides, the Facebook chat of A6 with A1 indicates that through A4, a close relative of A6, A1 got access to A6.

(122) There are lot of discussions in the telegram group 'The Gate' and 'Taswib' where Adam Ahammad replies to the queries made to Amu. It shows that Amu is Adam Ahmmad. For example, in Exhibit P148 series on 09.09.2016 at 12:59:16, when Abdul Azeez asked 'Amu kando kaaryagal', then Adam Ahmmad replied that "Kandu". All these facts prove beyond any doubt that A4 Ramshad is **Adam Ahmmad** and he is also called as **Amu** by the other participants.

Relationship of A5 with the identities 8GB/ Rayyan/ Kazcha/ Shaas

(123) There is concrete evidence to show that the person who used the display name as '8GB' in the telegram chat is Rayyan. This is evident from the testimony of PW13, which is strongly corroborated by Exhibit P29 chat conversation made between '8GB' and PW13, who was with the display name 'Hope'. As per Exhibit P29, on 07.09.2016 at 02:03:26 p.m., 'Hope' asked '8GB' that is he not Rayyan. Then '8GB' agreed it. Both of them made an elaborate discussion and decided to meet together, as directed by A1 (Muthukka). They fixed their meeting place near Mavoor at a bus stop called PHED (discussion made on 10.09.2016 between 7:50 to 11:45). On 11.09.2016, '8GB' asked 'Hope' that was it not possible to meet on that day itself. 'Hope' informed that he was right then in Mavoor town, just opposite to Famous Bakery. PW13, when examined during the trial, clearly deposed that he met A5 on that day, in front of the Famous Bakery near Mavoor town. He identified A5 from among six other accused persons. The chats made between them as discussed above, got marked through him.

(124) It is brought out in his cross examination that PW13 did not inform the police even when he realized that A5 met him with a plan to murder Shri.M.T.Ramesh, a political leader. He conceded that he did not show the telegram chats between himself and A5 to the NIA officials, when he was questioned. He further agreed that though he could have found the date on which he met with A5, had he inspected his device, he failed to say the date to the Investigating Officer. It was also come out in his evidence that PW13 identified A5 for the first time in court. But, when his evidence is closely analysed, I did not find any reason to discard it for the matters

elicited in cross examination. He explained during cross examination itself that his mobile phone was seized and sealed by NIA in the morning and his statement was recorded thereafter and that is why he was not able to show the chat conversations to the Investigating Officer. The first time identification in court may be a weak evidence, when the witness had earlier got only a fleeting glimpse of the culprit. It is not the case here. They met in broad day light and discussed in detail. Identification in court took place within two years as well. It is irrelevant that PW13 did not inform the matter to the police, even when he came to know about the criminal design of A5. There is nothing unusual if laymen like PW13 did not take such ideal steps.

(125) In Knowledge group, Rayyan appears in 2 IDs. At first he used an ID with number 167714916. Later, he changed his ID as 266901926 and then he started to use the display name '8GB'. (8GB/Rayyan was also called as "shaas". This is evident from the chat conversations made in between them marked as Ext.P121(c). On 28.08.2016 at 09:13:09 p.m., A1 declared that he appointed "shaan" as ameer for the mission they discussed in the Knowledge group and he directed all the members to obey him. A1 further said that "shaan is the kunya of kzhcha". Then the person who used the ID ending with 916 raised a question that was it not "shaas?". It is apparent that he was correcting A1, as he used 'shaan' instead of 'shaas'. Spontaneously, A1 reacted and he said "sorry, yes shaas". Thereafter, A1 asked him whether he remembers his code name. In reply, shaas or 916 replied that it is Rayyan. Then A1 makes it further clear that Rayyan would be his code name which was readily agreed by 916. From this, it is evident that '916' is Rayyan. **Rayyan** is also '**kzhcha**' and '**Shaas**'.

(126) Rayyan used the ID ending with 916 only until 31.08.2016. Later, when the members sought for the presence of Rayyan, A1 on the same day informed others that the account of 'kazhcha' is lost and he requested Bilal to remove him. When Bilal informed that he did not know how to remove him, A1 asked Bilal to contact him. On 07.09.2016, A1 declared that Rayyan is back. On the same day onwards, '8GB' started to chat with the ID 266901926 and he also replied to queries made to 'Rayyan' or 'kazhcha'. So, it is proved that '**8GB**' is **Rayyan** as well as **Kazhcha**.

(127) The evidence adduced by the prosecution to demonstrate the identity of A5 has been severely attacked by Shri.P.C.Noushad, the learned counsel appearing for A5. According to him, PW100 deposed that A1 had obtained a SIM card for starting a telegram ID in the name of 'Kazcha' and it was later activated by inserting the SIM card in the mobile phone of PW100 by obtaining a One Time Password (OTP). Placing reliance on this testimony, the learned counsel contended that by using such an OTP, anybody could open a telegram application in an electronic device and hence there is a higher probability that the telegram account was actually activated and used by somebody else other than A5, by sharing the OTP and hence there is no acceptable evidence to link A5 with the name 'Kazcha', '8GB' or 'Rayyan'.

(128) Shri.Noushad raised another important contention regarding the identity of A5. PW103, the Investigating Officer, deposed in response to a question posed by the learned counsel for A5 that, in his estimation **Rayyan** and **Abu Rayyan** are not different persons. Based on this version, the learned counsel stoutly contended that Abu Rayyan had seen chatted with 8GB and hence when Rayyan or Abu Rayyan is a single identity, Rayyan could not be 8GB and thus, the entire prosecution case as

regard to A5 is falsehood. Shri.Noushad, strenuously submitted that the benefit of doubt in this regard should be given in favour of the accused, as the prosecution has to establish all facts beyond reasonable doubt, but the burden of the defence side is just to show a probability.

(129) Another circumstance found in the evidence of PW13 is also heavily relied upon by the learned defence counsel to contend that the data said to have been recovered from the phone of A5 is modified or edited by NIA to make suit their contentions. It is his submission that if A5 has no connection with the group chats, even if he was seen identified by PW13 or even if he instigated him to gather information about Shri.M.T.Ramesh, it would not attract any offence under the UA(P) Act.

(130) For the reasons stated below, I am unable to accept the said contentions. True, PW76 spoke about a possibility that a telegram ID could be operated in two different mobile phones by sharing OTP. It is brought out in his cross examination that a SIM card was obtained by A1 to create a telegram ID for 'Kazcha' and as part of that process, OTP was received in the mobile phone of PW100. In fact, there is nothing against the case of prosecution in the said statement made by PW100. It is all throughout evident in the telegram group chats that the telegram IDs they used were obtained only on the basis of fake SIM or by cleverly using the identity of some unknown persons. Therefore, who created the telegram ID is not important. What is important is only that who used that ID subsequently, and did he make the statements relied on by the prosecution, using that ID. Let us now examine the probability of the defence case.

(131) In this case, when A5 was arrested, MO15 mobile phone was in his possession and Exhibit P29 personal telegram and Exhibit P121(i) chat conversations were found within the said phone. These

personal chats are in between 8GB/Rayyan and either A1, A2 or PW13. Unlike the authorship of chats made in a group, one cannot simply shirk his responsibility of the personal conversations found in his mobile phone. It is true that PW76 deposed about a probability that by sharing OTP, the very same telegram ID could be used by somebody else. In this case, despite the said version of PW76, A5 did not go on with an explanation that somebody else had used the telegram ID initially and made those chat conversations, but at the end, when A5 also innocently installed the telegram application with the same ID by receiving OTP shared by somebody else, all the previous chats were suddenly downloaded to his phone. This is the only possibility for having those data in MO15 of A5. In the absence of any such reliable and acceptable explanation from A5, he should be held responsible for the personal chat conversations found in his phone. In short, when A5 has no explanation as to how Exhibit P29 conversations found a place in his phone, the probability suggested by the defence counsel has no substance. It is A5, who alone can prove that, somebody befooled him to download the data generated by the other in his own phone, by sharing OTP. This aspect was not even suggested to PW76, through whom the said probability was brought out.

(132) Even without the help of inference made above, his connection with the telegram ID 8GB is otherwise well established. Evidence of PW13 is sufficient to hold that when he had chatted with 8GB and exchanged the secret messages conveyed by Muthukka (A1) and decided to meet him at Mavoor Junction, the person who reached there is none other than A5. It is interesting to see that just few moments before the said meeting, '8GB' chatted with PW13 using the said ID, and furnished explicit details to identify him, including the colour of his clothing,

materials held by him, the place at which he reached etc. He said that he was in front of a shop which is opposite to Famous Bakery and that he wears gray shirt, jeans and he held a bag. Prosecution has taken care to produce the CDR (MO18) of the cell phone of A5, from which it is evident that he had reached somewhere around Mavoor at the time which corresponds to the time generated in Exhibit P29 chat. The time recorded in Exhibit P29 at which A5 intimated that he reached in front of Famous Bakery is 9.57 a.m. On an analysis of the time recorded in all the chats in telegram group with the evidence on record, it is clear that this is the server time with which 5.30 hours are to be added. When it is so added, the time would be 3.27 p.m. The CDR shows that A5 reached near Mavoor at 3.24 pm.

(133) There is yet another clinching evidence to show that A5 Safvan was part and parcel of the team lead by A1. In Exhibit P148 series telegram group 'the Gate', A1 posted that '**Kazcha**' is **Safvan** and he is working at Tejus, a newspaper in Calicut (on 23.08.2016). He revealed this when he initially felt something suspicious about Kazhcha. Later, he apologised for it and declared that Kazha is a perfect person, suitable for their mission. Therefore, I find no force in the first submission of the learned defence counsel that A5 could not be linked with the telegram ID '8GB'.

(134) It is true, PW103 deposed that **Abu Rayyan** might be **Rayyan**. It cannot be ignored that PW103 made only an assumption on the basis of what he had found from the telegram chats. In his deposition itself, he said that, that was only his understanding. When it is proved by all other attending circumstances that Abu Rayyan and the person using the display name 8GB are different persons, the assumption or opinion made by PW103

has no legal relevance. When the evidence is placed before the court, it is the court which has to take a decision on it, and in that matter, opinion of the Investigating Officer has no place at all. The name '**Rayyan**' is only a code used by A1 to denote and identify '**8GB**'. It has nothing to do with the person who used the display name in Arabic letters as '**Abu Rayyan**'. He used a telegram ID **186581194** whereas, 8GB used the ID **266901926**. This is evident from a mere perusal of Ext.P49, the chats in Darul Fikr. In this context, what PW100 deposed is also irrelevant. He is also stating before the court from his memory. The court has to look into the documents produced for its inspection, rather than accepting the oral evidence of those witnesses as to the *contents of the documents*. Viewed from this backdrop, I find no reason to suspect the prosecution case in this regard. There is also no doubt about the identity of A5 as '8GB' and hence there is no question of giving any benefit of doubt to him.

(135) What remains is the contention that the data found in the mobile phone of A5 could be edited. The foundation of this contention is that when PW13 was cross examined he deposed that, after his meeting with A5, he intimated A5 that he was not interested to co-operate with the plan of A5 (to observe the political leader). It is pointed out by the learned defence counsel that the said conversation is missing in Exhibit P29, which in turn shows that NIA has not brought the real conversations before the court. I am absolutely unable to accept this contention for many reasons. First of all, when a person deposes before the court about such a fact, he might not be able to recollect all facts with minute details. Further, PW13 might not have actually communicated A5 that he was not interested. Alternatively, he might have communicated him, but it might have been through some other medium, other than the telegram ID. Even if he had

communicated it to A5, it might not have been retrieved by PW92. Anyhow, the evidence of PW92 as to these matters is of immaculate quality, and he testified that, none of the data inspected by him in any digital devices, including MO15, were modified or edited subsequent to the seizure of those digital devices.

(136) The defence side strenuously contended that nothing was brought out from the forensic analysis of the phone said to have been furnished by PW13 to NIA for such inspection. But the records in this court show that the said phone was produced here and forwarded to C-DAC for cyber forensic examination, and then it is reported that the expert could not access the contents due to technical snag.

(137) The evidence of PW102, an NIA official, who assisted the Investigating Officer, reveals that A5 made a disclosure while under arrest that if he was taken, he could show the said place in Mavoor. This fact was also spoken to by PW59, an independent witness. It stands proved through PW102 and PW59 that A5 pointed out the varanda of a shop opposite to Famous bakery, Mavoor, which speaks volume about his conduct. Unlike chats in a group, personal chats retrieved from MO15 mobile phone possessed by A5 has telling effect on his identity as '8GB'. From Exhibit P29, it is evident that he made personal chats with PW13 and A1 in the said title, and this was retrieved from MO15. All the above aspects convincingly establish that it was **A5** who interacted with others in the telegram groups with the ID **8GB**, and with the nickname **Rayyan, Kazcha** or **Shaas**.

Identity of A6 as Jasim N.K/Cheppu/Wanderer111

(138) A6, Shri.Jasim N K, is not a member in any of the telegram groups in which numerous conversations had taken place. The prosecution tries to assert his complicity through the materials found from his own

mobile phone. MO1 mobile phone was seized from his possession at the time of his arrest. The discussion made at the earlier part of this judgment shows the case of prosecution beyond any suspicion as to the seizure of material objects from the possession of the respective accused persons. It is also proved that at the instance of A6, his Facebook account was extracted and the extracted data further reveals his connection with some of the accused persons. In fact, his Facebook account is in his own original name 'Jasim N K'. A6 did not also deny that the ID 'Jasim N K' is not his own, when he was questioned under section 313 of Cr.PC.

(139) Soon after the arrest of A6, his rented flat at Bangalore was subjected to search by PW83. It is proved through PW83, an NIA officer that he obtained MO57 paper slips (yellow sticky notes) from his flat. The evidence of PW51, PW52, PW53 and Exhibit P80 rent deed show that A6 had taken the said apartment on rent. Exhibit P168 report of the Scientist in CFSL, Hyderabad, which was marked under section 293 of the Cr.PC., proves that the writings in MO57 are made by A6. A6 also did not deny this aspect, but he refuted the genuineness of the writings, contenting that he was forced to write so by the NIA officers on such paper slips. Even when the NIA officials were subjected to lengthy cross examination, no materials were elicited to show that the claim of A6 is genuine.

(140) In MO57, he wrote inter alia, the following matters :- (1) Wanderer111 (2) Muthukka (3) Jameel Tvm (4) Dhulfuqaar333. These writings were found to be made in the handwriting of A6, as per Exhibit P168 report. In Exhibit P121(j) series personal chat conversation, Jasim N K referred to **Wanderer111** as his ID (on 22/09/2016 at 11:58 p.m.). The conversation in Exhibit P121(j), which is retrieved from MO1, includes personal chats made between 'Wanderer111' and Bilal. In that

conversation, when Bilal asks him about his identity, 'Wanderer111' replies that his Thazkya is **Muthukka**. It is observed earlier that A1 asked through his Facebook ID Mansi Buraaq to A6 that he should contact Yusuf /Bilal. All these aspects corroborate each other piece of evidence and altogether fairly demonstrate that the prosecution case as to the identity of A6 is genuine.

(141) It is already observed that, unlike the identity of persons in those telegram groups, individual chats between two persons, when retrieved from the mobile phone of a particular person, prima facie show his connection with that identity. During the personal chat between A6 and Bilal, on 27.09.2016 at 08:42:58 a.m., Bilal informed A6 (Wanderer111) that he would be called as 'Cheppu'. A6 agreed to it without any objection (Exhibit P121(j) series). The learned Public Prosecutor places reliance on the fact that 'Wanderer111' informed Bilal(A2) that he was coming to the meeting in a scooter (chats in Exhibit P121(j)(2)) and that the key of the scooter was seized from A6, which was later proved to be matching with the scooter seized from Vadakara bus stand and thus, it also asserts the identity of A6 as 'Wanderer111'. The discussion made above clearly proves that A6 has a Facebook ID as '**Jasim N K**' and he chatted with A2 in the ID '**Wanderer111**'. He was also called as '**Cheppu**'.

Relationship of A8 with the names Moinudeen Parakadavath /Abu Al Indonesi /Ibnu Abdulla

(142) It is not in dispute that A8, Shri.Moinudeen, is called as Moinudeen Parakadavath. In Exhibit P148 series chat in telegram group named 'The Gate', Abu Al Indonesi replies to a question made by A3 (Abdul Azeez) to Ibnu Abdulla. (Chat conversation made on 20.08.2016 at 06:35 to 06.41). From this, it can easily be inferred that Ibnu Abdulla is Abu Al Indonesi.

(143) The next question is whether Abu Al Indonesi ('Indonesi' for short) is A8. The prosecution proposes to prove the identity of Indonesi as A8 mainly through the fact that when Abu Ayisha asked Ibn Abdulla (Indonesi) to send money to A2, the money was sent in the name **Moinudeen Parakadavath** and thus Indonesi is no one other than A8. Prosecution also relies on the evidence of PW76 and PW100 to establish the identity of A8 as Indonesi. However, the defence side took a firm contention that though the money was sent in the name of A8, it was done by PW76 by misusing the identity of A8, to avert the investigators. Shri. P.C.Noushad, the learned counsel appearing for A8, argued that PW76, a close associate and roommate of A8, had access to his mobile phone and he even admittedly obtained telephone connection for him in the name of A8 and had created social media account in the name of father of A8. Shri.Noushad persuasively argued that if PW76 is mighty enough to do so, he could do all the activities allegedly carried out in the name of A8 or with the identity of Indonesi, especially when it is proved that PW76 is really a tech-savvy, whereas A8 is only a matriculate.

(144) **Evidence as to money sent to A2:** Let us examine the evidence in detail to see that whether A8 was caught up in the plot of PW76. The prosecution proved through the evidence of PW69 and from PW27 that Rs.18,000/- was sent in the name of Shri. Moinudeen Parakkadavath on 24.09.2016 from Abu Dhabi, UAE to Shri.Swalih Mohammad (A2). MO33 series and Exhibit P105 documents would prove that money was so sent, and it was received at Chennai. Self attested copy of identity proof of the recipient is also part of Exhibit MO33 series. Both the above witnesses deposed about the process through which money could be transferred through Western Union Services. According to them, the

sender has to submit identity proof at his end and then he will be provided with one MTC number, which he has to share with the receiver. The receiver should furnish this number in any branch of the Western Union and in addition, to show his identity proof. Then the money would be given to the recipient.

(145) PW27 deposed that MO33(a) form was filled up and signed by Shri.Swalih Mohammed (A2). The defence side did not dispute that the money was received by A2, when PW27 was examined. But there is serious dispute as to the sender. When PW69 was cross examined, it was elicited from him that though, usually it is compulsory to produce identity proof by the sender, he could not say now that whether the staff concerned had actually verified the identity. It was also come out that the Western Union Service has several agents in Electra street from where money was sent, and it is actually traceable whether which of their agent had actually made the transaction.

(146) Based on the above materials brought out through cross examination, Shri.P.C.Noushad submitted that in the absence of evidence like the form filled up by the sender and his identity details (as in the case of recipient), it could not be found that money was actually sent by A8. Referring to section 166A of Cr.PC, he further contended that NIA could have obtained those documents, or at least they could have brought it here through the officers of Western Union Services in India, and the absence of such attempt causes considerable doubt in the prosecution theory.

(147) When the evidence of PW69 and PW27 is analysed in the light of the documents produced by them, it is obvious that the said transaction was one among the regular commercial business of the Western Union Services and at least at the receiving end, they have strictly followed

their accepted procedure to ensure identity of the customer. Ordinarily, from the available evidence, this court would have been straight away persuaded to draw a presumption as envisaged under illustration (f) to section 114 of the Indian Evidence Act that such course of the said business (ensuring identity of the customer) had been followed in this particular case at the other end as well. But in the light of the peculiar contention raised by the learned defence counsel that PW76 had admittedly obtained a mobile phone connection for him in the name of A8, I think a deeper scrutiny is required. Shri.Arjun, the learned Public Prosecutor contended that the above said submission is absolutely false and it is an artificial defence, harping on a fact obtained as a windfall during cross examination. It is his submission that unless this was done with the consent of A8, how he was able to ask such a question to the witness. He submitted that in the telegram group Bab-Al-Noor (Exhibit P95), Indonesi and PW76 (with the display name 'Amir') had participated together and in 'The Gate' where PW76 was not a member, Indonesi chatted on 29.08.2016 that "*Amir will not longer for few months. In.Shaa Allah. There is some issue. He will be back soon and please all dua for him. May allah make easy for him*" and to this comment, A2 asked 'You mean Ameerka' and then Indonesi replied that 'Yes. Akhi. Ameerka'. It is his submission that when PW76 and A8 were working together in Abu Dhabi, A8 made it known to other members that PW76 would not be available for a longer time, it conclusively shows that the said ID was not that of PW76. The learned Public Prosecutor further contended that in the telegram group 'Play Ground', A1 asked Indonesi that could he arrange some people from Kasargod, and this surely indicates that Indonesi is no one else other than A8, who belong to Kasargode, whereas PW76 resides at Malappuram. It is also argued by the learned Public

Prosecutor that admittedly, A8 traveled along with A7, the kingpin of the conspiracy, upto Iran.

(148) The contention raised by Shri.Noushad is worth discussing. PW76 admitted in cross examination that he had been using a SIM card with No.558144980 from 2007 till 2016. He stated that A8 never used that SIM card. However, he made an important clarification that the SIM was originally registered in the name of PW76 himself and when he received a message that its validity should be extended, he was forced to submit the ID proof of a person having proper visa and at that time, as his visa period was over, he temporarily transferred the registration of SIM card to the name of A8. Further, PW76 deposed that he did not stay along with A8 after 2013 (Para 17). There is no dispute about this aspect. This being the whole picture of the evidence elicited during cross examination, an inference as argued by the learned defence counsel, viz. PW76 maliciously obtained a SIM card in the name of A8, cannot be readily drawn.

(149) **Evidence as to nexus of A8 with A1 & A2:** The contention raised by A8 loses its glory when it is proved that A8 has close nexus with A1, the leader of the telegram groups, and A2 as well. A1 and A8 were working in different countries and are from different districts in Kerala. PW103, the Investigating Officer deposed that, when he questioned A8 in his custody, A8 disclosed that he had a Facebook account with display name 'MainuISM' and that he would login into the said ID, if he was provided with adequate facility. Through PW103, it is proved that, based on the said disclosure the Facebook account of A8 was extracted by NIA and in that account, the name of Mansi Buraaq, who is proved to be A1, was added in the friends list.

(150) It is further proved through PW88 and Exhibit P118 that

Rs.20,000/- was deposited in the bank account of A1 on 04.08.2016 in the name of A8. Even if it could have been argued that this was also done by PW76, it was not put to PW76 when he was cross examined. It was also not asked to him even when he was re-examined later. This was also not put to PW88, through whom the bank transfer of Rs.20,000/- was proved. It is to be remembered that the application of illustration (f) to section 114 of Indian Evidence Act is higher in the transactions made entirely through mainstream banks like ICICI.

(151) There is another clinching evidence to connect A8 and A1. As per Exhibit P120 report of PW92, he retrieved call details received by A1 in his MO8 phone. As per this evidence, on 24.09.2016 at 05:17:39 hours, A1 received a call lasted for 7.01 minutes from a phone number 00971555684844. From the evidence of PW68 and MO72 series bank account statements, A8 had been maintaining an NRE account in the Indus Ind bank, Kasargode branch, wherein A8 had furnished the above said number (00971555684844) as his telephone number. This fact is not disputed by the defence side. When A8 was asked to explain (under section 313 of Cr.P.C) about this phone call, he stated that it might also have been made by PW76. Making a call by using a mobile phone is not as if chatting in social media with another person's identity. It requires opportunity to have physical access to the mobile phone of another. As stated above, it remains unchallenged that PW76 was not staying along with A8 after 2013.

(152) Similarly, MO76, the CDR of the cell phone of A2, shows that he received a call from the said overseas number of A8 on 30.09.2016 at 20:36:50 hours. This aspect was introduced in evidence through PW74, the Nodal Officer of the cell phone company. Still, it was not put to PW76 when he was examined before the court, that it was made by him. It is

argued by the learned Prosecutor that, the date on which A8 seemed to have contacted A1 and A2 has some importance. According to him, A8 contacted A1 on the very same day on which he sent money to A2 and he contacted A2 within a couple days of receipt of money by A2 and thus, in all probability, these calls were made in relation to the sending or receipt, of money.

(153) The explanation offered by A8, A1 and A2 as to these calls has some relevance in this case. A8 said that, his phone was misused by PW76 as ISD facility was not available to him. A1 agreed that he received such a call, but it was PW76 who called him. A2 also made the same version. A2 went further and stated that the call he received was from an unknown number and the caller introduced him as Mujeeb. When A2 asked more details, he replied that he was known as Afdal or Salahudheen, and then the call was terminated within few moments, A2 explained.

(154) These explanations do not make any sense. First of all, when PW76 was examined, such a case was not put to him by A8, even when the copy of call data record and report of the expert were served to him much earlier. Further, the learned Public Prosecutor pointed out few relevant things which are suggestive of falsity of the explanations offered by A1, A2 and A8. From the evidence of PW92, the above said overseas number of A8 is seen saved by A1 in his MO8 phone in the name '**Mainul Islam**'. Secondly, when the Facebook account of the A2 with the name Abu Hasna was extracted, it was seen that he has saved that number in the contact list as '**Mainul Islam, Kasargode**'. The very same number is seen saved in that manner in another Facebook account of A2, with the name Yunus Salim. The extraction of the said Facebook accounts of A2 was made on the basis of the disclosure statement given by A2 to PW84, which was

proved by PW84 and PW18 and Exhibits P35(a) and P37 series.

(155) The unchallenged evidence of PW68, the bank manager, has proved that A8 had maintained an email account with the name **p.k.mainu@gmail.com**. It is also proved through PW103, PW80 and Exhibit P91(d) that when PW103 questioned A8 in custody, he disclosed about a Facebook ID with display name **mainuISM** and username **pk.mainu@gmail.com** and that he logged on to the said account and pointed out certain data, which eventually lead to a discovery. From this evidence, it is beyond any dispute that A8 has exclusive connection with the ID '**MainuISM**' and the name **mainu**, whose actual name is **Moinudeen**. There is also evidence that A8 hails from Kasargode. Thus, the name saved by A1 and A2 as '*Mainul Islam, Kasargode*' was not by any coincidence, but it clearly denotes their previous nexus with A8.

(156) No doubt, the prosecution has to prove its case on its own footing and not merely on the basis of inferences to be drawn from the statement given by the accused persons under section 313 of the Cr.PC. But it is well settled law that, when the prosecution has satisfactorily proved its case, false explanations offered by the accused may some times replace the missing links. In this case, even without looking into the said statements of the accused persons, it can fairly be concluded that the identity of A8 as **Indonesi** has been cogently proved by the prosecution and the probability suggested by the defence side that it might have been the identity of PW76, is completely unsound.

(157) Though it is not improbable that one person may use two accounts/identities in a telegram group, making such comments as pointed out by the learned Public Prosecutor is highly improbable. True, when a fact is to be established by the defence side, they need only to show a

probability, in contrast to the burden of the prosecution, where they required to prove it beyond reasonable doubt. At the same time, law is settled that the court should not be swayed by any and every doubt or hunch raised by the accused. The doubt must be reasonable, genuine and capable of eclipsing the ring of truth in the prosecution case. It is relevant to quote the resounding words of the Hon'ble Supreme Court in **Suresh Chandra Jana v. State of West Bengal (2017 (16) SCC 466)**.

“It may be mentioned that it is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is - whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt, i.e. the doubt which rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. If the benefits of all kinds of doubts raised on behalf of the accused are accepted, it will result in deflecting the course of justice. The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.”

(158) **Inferential facts - difference in the identity of Indonesi and Amir:** There are several other reasons to discard the defence suggestion in the above matter. When the relevant chat conversations are closely examined, some other distinct features are also emerging, to show that ‘**Indonesi**’ and ‘**Amir**’ are different entities. Indonesi abundantly uses

the symbol “.” (Dot mark or 'full stop' mark usually used to denote end of a sentence) in his conversations, especially when he types Arabic or Malayalam words. For illustration, on 20.08.2016 at 05:22:46 a.m., Indonesi writes in Bab-Al-Noor group as follows: “Ma.Shaa.Allah.Great.Akhi”. On the same day at 03:40:23 p.m., he writes “Ningal.Mujahid.Aano.”, “Oru.Paniyum.Cheyyarille.” He does so more often than not in chats in all other groups. But whenever PW76 chats, he follows the usual style of word format, without unnecessarily using ‘dots’. On 28.08.2016 at 02:54:18 a.m. to 02:55:33 a.m., he made the following chats in Bab-Al- Noor “Aslamu alaikum Ikha”, “Alhamduriallah!”, “alahamdurillah”. All these texts were made without adding dots.

(159) Another important distinction which was noticed in the writing style of Indonesi and Amir is in respect of the difference in spelling used by them for the same words. On 28.08.2016 at 02:54:29 a.m. in Bab-Al-Noor group, Amir said ‘Alhamdurillah...!’. On the same day, at 02:55:33 p.m., he posted the same word as ‘alamdurillah’. But Indonesi frequently uses the same word with a different spelling. He uses ‘Alhamdulillah’ (Instead of ‘l’, he uses ‘r’). This can be seen in Bab-Al-Noor on 07.09.2016 at 04:31:18 p.m., in Darul Fikr on 09.09.2016 at 11:34:58 p.m., or on 10.09.2016 at 03:34:34 p.m. and 10:25:58 p.m. Like this, Amir posted in Bab-Al-Noor on 28.08.2016 at 02:54:18 a.m. that ‘Aslamu Alaikum Ikhwa’. When the chats made by Indonesi are examined, it is found that he writes ‘Assalamu’, instead of ‘Asalamu’ (Bab-Al-Noor on 01.09.2016 at 06:52:54 a.m., Darul Fikr on 15.09.2016 at 12:05:18 p.m.)

(160) There is one more data to analyse the correctness of the defence contention. MO123 is the Huawei mobile phone seized from the possession of PW76. In Exhibit P140 report and P141 hard disc, PW92 has

furnished two screen shots (**Evd06/mobile phone/Q1/picture files/IMG-20161007-WA0003 & IMG-20161007-WA0003**) of personal telegram chats made between PW76 and Abu Ayisha (A7). PW92 has deposed about it in paragraph 184 of his affidavit. In the said personal chat, A7 and PW76 had made a discussion in Malayalam language. A free translation of the same is as follows:

Abu Ayisha (A7) :- (October 5, 2016) Do you want to escape along with **Moinu**? If continuing there is risk, you should leave that place at the earliest. Not sure whether **Moinu** will come. Think and inform me. Arrangements are ready.

(October 6, 2016). **Moinu** committed many mistakes. His identity is known to many persons. It is very risky. When he is arrested, they will come to you. Try to escape with him. If he is not coming, at least you should escape. Several things happened in the group without the knowledge of mine or yours.

PW76 :- Allah.. Aslam Alaikum. I was keeping away (from the group) for a while. I do not know how such a plan was developed in the meanwhile. His (**Moinu's**) marriage was not materialised. He is trying to come there and I am in a terrible confusion as to next step. Did **Manseed** know my identity? My identity is known to you and **Moinu** only. And I saw a picture, in which one of our Ansaars (brothers) is seen with a sling in his hand. Let Rab Allah help him. Ameen.

(161) As discussed above, MO123 was also subjected to cyber forensic examination by the very same Expert and he found nothing suspicious about the genuineness of its contents. The above conversation reveals the concern of PW76 and Abu Ayisha about Moinu. When the

evidence of PW76 is considered in its entirety, it is obvious that here, he is speaking about A8 and the “mistakes committed by him”. They were very anxious that if the police reached to Moinu, they would nab PW76 as well. It is to be remembered that as on the date when this conversation had taken place, PW76 was not an approver and he was abroad. Thus, there is no reason to suspect his statement.

(162) The said statement of A7 and well as PW76 is admissible in evidence under section 10 of the Evidence Act, as both of them had role in the conspiracy, alleged to have been made by all. As per the prosecution story, PW76 was one among the conspirators, but had given pardon. All these materials are sufficient to place reliance on the testimony of PW76, though he is an approver. He clearly revealed the identity of A8 as Indonesi (For the same reasons, his evidence is equally helpful to show the identity of A1 also as he mentioned about ‘Manseed’).

(163) True, the evidence of approver has to be subjected to very strict scrutiny as he had participated in the crime and has got protection of law by betraying his associates. He may thus likely to please the prosecution and may even try to weave false details into the evidence. This is why normally the courts insist for corroboration of his evidence. But it is well settled law that the courts need not insist for independent confirmation of each and every material circumstance spoken to by the accomplice. What is required by law (only in a case where the court considers that a presumption has to be drawn as per illustration (b) of section 114 of the Evidence Act, else section 133 makes his evidence worthy, even to convict the accused) is only some additional evidence rendering his version probable, or giving a general impression to the court that his evidence is trustworthy and it could be acted upon. In **Piara Singh v. State of Punjab**

(AIR 1969 SC 961), the Hon'ble Supreme Court held that such corroboration may be by direct evidence or by circumstantial evidence. In this case, the evidence of PW76 as to the identity of A8 is perfectly corroborated by all the above circumstances. In fine, the prosecution successfully demonstrated that A8 is **Moinudeen Parakadavath / Abu Al Indonesi / Ibnu Abdulla**.

A7 as Abu Ayisha / Sameer Ali / Kochappa :-

(164) A7 does not stand the trial. However, the identity of A7 as Abu Ayisha has some relevance in this case. Being a conspirator, statement made by him is admissible in evidence under section 10 of the Indian Evidence Act, though it may not come within the fold of section 21 or 30. It is Abu Ayisha, who alleged to have instigated A1 and conspired with him to create all those telegram groups and to start a 'vilayath' (Unit) of ISIS in Kerala. His brother, PW55 deposed that to his knowledge, A7 died in Afghanistan while waging war for ISIS. He deposed that he received a WhatsApp message from his brother, intimating that he was joining ISIS. As informed by his brother, he contacted A7 in the telegram ID Abu Ayisha and Facebook ID Sameer Ali. He said that he received voice messages through telegram. PW55 identified those messages when played in open court. The unchallenged evidence of PW55 is enough to show that A7 is Abu Ayisha and Sameer Ali. Apart from this, the chats in the groups 'The Gate' and 'Taswib' reveal that Abu Ayisha is called '**Kochappa**'. When the members asked question with a title 'Kochappa', Abu Ayisha always responded. In Exhibit P121(f)(1) personal telegram chat retrieved from MO4 phone of A3, Abu Ayisha asks A3 to create a Facebook account with the name '**Sameer Ali**'. Hence, it can be concluded that A7 used the above said names while using social media.

(165) **Conclusion** : Therefore, the prosecution has succeeded in proving that the accused persons had used the identities correspond to their name in the chart shown in the beginning of this discussion. Once it is so established, each of the accused persons is liable for the legal consequences flowing from the statements he made with such identity.

(166) **Point No.5:- (Did the accused persons agree to do an illegal act) :-** The gist of the offence conspiracy, as defined in section 120A of IPC, is an agreement to break law. Once the unlawful combination of mind or meeting of mind is complete, the offence stands committed. Suggesting an idea or expressing an opinion, howsoever horrendous, is insufficient. Even if another person supported that idea, it does not amount to an agreement, until their idea or desire matured into the form of a concrete plan or scheme. Mere association with the other accused or having knowledge about the subject matter of conspiracy, will not make them conspirators. These are the general principles emerging from the law laid down in the decisions referred to by Shri. Shereef and Shri.Noushad. Let us evaluate the evidence in the light of these principles.

(167) As per the charge sheet, A1 and A7 had created secret groups of men using social media platforms and thereby they formed a terrorist gang or module of ISIS in Kerala and decided to commit terrorist acts. They created a telegram group called 'Knowledge' and conspired to kill Shri.M.T.Ramesh, a political leader in Kerala. They also created another telegram group called 'Taswib' and conspired to kill as many as possible Jews in Vattakkanal. Apart from these groups, the accused persons and their confederates discussed about, attacking a meeting of Jamaat-e-Islami, the necessity to collect explosives, committing ATM robbery and waging war against India etc. in some other social media groups. This is the gist of

the prosecution case.

(168) In order to prove that the accused persons conspired each other and agreed to murder Shri.M.T.Ramesh, the prosecution mainly relies on the chat conversations found in telegram group named 'Knowledge'. The chat conversation in this group were retrieved from 4 devices seized from the possession of the accused persons. It was found in MO11 mobile phone seized from A2, MO4 mobile phone seized from A3, MO21 tablet seized from A4 and MO15 mobile phone seized from A5.

(169) The defence side raised a forceful contention that even if it is found that the conversations are made by the accused persons, it would not amount to a criminal conspiracy, the basic ingredient of which is an *agreement* to do an illegal act, which is completely absent in the chat conversations. According to them, the conversations at the best reflect only an elusive or fanciful idea entertained by each of them and though, possessing such an idea might be against our conscience or public morality, it is not illegal or prohibited by any penal statute. No one could be punished for entertaining such weird and fictional ideas or a mere desire experienced only in the virtual world of Internet, which does not attain the shape of a 'tangible' plan to actually execute and commit a crime in the real world, they contended. This being the nature of the defence assertions, it is very much necessary to have an in depth analysis of the conversations made between the group members.

(170) **Discussion in Knowledge group** : For an effective understanding of the magnitude of the chats, they are extracted hereunder. Many of the conversations are made in Malayalam language, either by using English alphabets or otherwise. For the ease of understanding, a free translation of the discussion is given hereunder, keeping aside unnecessary

comments or chats, which do not have any bearing on the main subject. Some expressions used by them are either explained within brackets based on proved facts, or shown as such for better understanding. Emphasis is also supplied at very relevant areas. Ext.P121(c), the conversation retrieved from MO11 mobile phone of A2, is under consideration. It starts from **28.08.2016** at 08:20:10 p.m. and ends at **27.09.2016** at 07:05:38 p.m. The participants of the group are A2 (in the name of Bilal), A1 (with the ID 527), A3 (as Abdul Azeez), A4 (As Aadam Ahammed) and A5 in two IDs. Until 31.08.2016 at 07:55:14 p.m., A5 used the ID 167714916. From 07.09.2016 at 10:32:52 p.m. onwards, he used another ID with a display name '8GB'. Instead of using the display name or numbers in this discussion, the author of each conversation will be mentioned as the respective accused person, as their relationship with such names was already established.

A1:- Let kadhcha (A5) come. Is Amu (A4) here? I discussed with Amu. He is brave and he will be with us. **A5:-** I need sometime. I want to finish some work. Will be back quickly. **A1:-** Ok. A shelter is ready in our location. Fully safe. Is the idea suggested by kadhcha suitable to our present situation? Will it affect our aim? **A2:-** May I make a suggestion? **A1:-** Isn't any other target, in Calicut itself, possible? **A2:-** **There are many persons who are creating trouble for us. We can start from there.** **A1:-** Yes. The war declared by *Sanghis* (RSS) against Muslims, itself is sufficient reason for us. That reason is a permanent one and really valid. What do you say? Who is the RSS leader in Calicut? **A5:-** Yes. We can spare Thillankeri, can't we? **A1:-** Yes. How is M.T.Ramesh? Thillankeri might have tight security as he has threat from CPM. **A5:-** **Doesn't Ramesh come to Calicut frequently?** **A1:-** Ramees is permanently in TV. **Where is Ramesh's residence? We have a shelter ready at Calicut.** Considering our present situation it is not safe to target Khaki

uniform(Police officers). They will have gun. Its our first step in KL (Kerala). How is Ramesh? **A5:-** Good. Security... **A1:-** Or, do you have any other suggestion? Don't you have a list? We have a safe shelter. Fully. **A5:- Ramesh is Ok. We should observe whether he has security.** **A1:-** Yes. We should study, when we will get him and also about his security. **I can stay there only for 3-4 days maximum. Because of that, everything should be made Ok.** **A5:-** Can we fix? What is the opinion of others. We are 5 members here. **A1:-** Yes. In case I can't reach there I appoint Shaan (A5) as our ameer in this mission and you all should obey him and follow him. **A1:-** I will help you. **Rayyan will be your code name. In this discussion and in our actions, we will use only our kunya. Not code name. I also will use my code name. Do you get me? I will be Muthuka.** **A5:-** Muthuka. **A1:-** Yusuf is Yunus, Abu Muad is Amu, Abu Bahseer will be Bucha. **A5:-** Ok. Is Bucha code or kuniya. **A1:-** Even when we meet we will use our code name not kuniya. Everybody should use code name. That is best. **A2:-** Then Muthuka, Amu and Bucha. **A5:-** Yusuf, Rayyan, Bucha, Muthuka. **A1:-** I am sorry as I wrongly said Rayyan's kuniya in public. **We should study Ramesh.** Amu is ready for that. But he is not experienced. He needs guidance. He is within the district. **A5:-** Muthuka is best to guide him. **A5:-** You can share suggestions as of details we need. **Journeys. Security.** **A1:-** If Aqeedha is ready, they are enough. But, no hope. Leave it. **What we want is his journey details, his vehicle, has he got a permanent driver or a temporary one, whether he travels in bus, from where we will get him free, is there any security.... If yes, how many?** **A2:-** I have a doubt. We are not attacking publically, right? **A1:-** Yes. In public. But we will try to find a place with as little public as possible. However, it is not possible to get a completely empty place. **A2:-** Ok. **How is our escape plan?** **A1:-** We will call it refresh. There will be two parts for escape. **Rayyan, we need 3-4 persons. One person should watch**

the surrounding. We will escape by dividing into two. A5:- Vehicle? We will take it on rent. Rayyan, is bike enough or do we require a four wheeler? A2:- Two wheeler is better. A1:- Who will ride? Will Amu ride? A5:- We can discuss while planning. First we should study. I am a rider. But only bike. A2:- I don't ride. Amu rides four wheeler. A1:- It is not possible to have a person travelling in a car, if we use bike. Bike is enough if he uses bus or if he walks. Then it is better. A5:- Is not car better? A1:- Car is better. We should prepare a budget. We should arrange a car. Two days will be enough, right? A5:- Amu? A1:- Amu is Abu Muad. A2:- What is the need for cash? A1:- Rayyan we need tools. We need to take rented vehicle. Food and travel expenses. Return journey. A2:- Tools? What kind of? A1:- GA Pipes, machete. Rayyan, from where can we buy machete? Is it available in Calicut? Is the chopper used to cut tender coconut, enough? It could be arranged from blacksmiths. Tamil Nadu is best for it. Bucha, please come. Waiting for Amu, Rayyan and Bucha. Let us send message to Bab-Al-Noor informing that we are online and to specifically come to this room (Chat group). A3:- I am present. If you need tools, I can arrange it. Insha Allah. A1:- Aiywa. How much will be the cost? Please tell me. Will you ride vehicle, Bucha? A3:- Cost is no problem. I can manage. In case it is necessary, I will ask Yusuf (A2). I don't drive car. A1:- We need three machetes. The best ones. We also need two GI Pipes. Rayyan will give the size. A3:- Are police our target now? A1:- No. It is an individual. One Sanghi. If we choose police, they may have gun. It is our future plan, though. A3:- Ok. Calicut? A1:- Yes. We expect that we will get him at Calicut. A3:- We cannot buy the tools from local market. We will be caught. It should be bought from outside. A1:- That you manage. Once you buy it, Yusuf (A2) will pick it. We should plan how we will bring it to Calicut. Pack it well. Very neatly. A3:- I will buy it and hand it over to Yusuf. Packing is not an issue. A1:- You must

help Yusuf. **In case I am not able to come, as I am abroad, you must be in the team. Are you ready?** A3:- I know. Ok. A1:- Allahu Akbar. May Allah reward you. **So, the next step is gathering information.** Brother of Amu is in hospital. A2:- Sorry. I was busy. A5:- **BJP National Council will be held at Calicut. Large scale preparation is going on. I will give the date tomorrow.** A2:- Can you ride four wheeler kazhcha? A5:- I know. But not well. I am not a good rider. We want well experienced driver. I am best if it is bike. A1:- How things going on ? I am very busy until today. Let Ameer be active. A5:- **Have you noticed the photo I posted about BJP National Council? Think positively about it. Many persons are available at Calicut.** Their program is at the new building opposite to Jayalakshmi Silks, Near Railway Link Road. There is a branch of Arya Vaidyasala. A1:- This is best information. Yes brothers. Please come and discuss. Rayyan, if the program is a big one, will the security be higher or lower ? A5:- I did not see any movement outside that building. But all the devils must be there. Our guests may have some charge there. A1:- **We have a big contingency. There is nobody for observation.** Amu is preparing for yathra (migration to ISIS). Because of that, he has to take utmost care. **We should entrust his part to somebody else. I will introduce a person to you. He is our well wisher. From Kozhikode. You must give him enough directions.** He is also preparing for yathra with his family including wife and brother. But it may take time, as she is pregnant. Because of that, he is not included in any cells. **You can meet him in person.** Are you Ok? A5:- Why can't we bring him here (to this group)? A1:- Will be done after your meet. Until then you chat in person. (After a while) There is no movement in this group. **We should move ahead.** A2:- Yes, what should we do? A1:- **Fix the target.** A2:- I don't have any important role in it. **Once the target is fixed I am ready to do the rest.** A3:- I am not conversant with the situation in Kerala. I don't know anybody. A1:- But

the target is already fixed, Ramesh. A2:- Then take next step. A1:- Yes. We need information. But Amu is not inclined to it. He may have his own reasons. Because of that, I entrusted it to somebody else. A2:- Who? Who is he? A1:- It will be followed by A5. Please read our previous chat. A2:- Ok. So we have to receive intelligence from Rayyan. We fixed that there should be three persons with Rayyan, Isn't it? What is the duty of each of them? A1:- Correct. Rayyan will entrust the work to another person, who will be an outsider. Bucha... Please make personal chat with Yusuf (A2). A2:- Ok. A1:- The account of kazhcha is lost. Please remove him. I am helping him. (Later)A2:- Now kazhcha is in the username "Kappal" (ship). (A5 now appears in new ID as '8GB' and posts some attachments. A4 also posts some attachments). A5:- I am back. A1:- I deputed an outsider to collect information. I already made arrangements with Rayyan to meet him in person and to give necessary guidance. It means the absence of Amu is over. A3:- In fact, I cannot understand the plan. That is why I am not able to be active. I do not know who are involved. A1:- (Explains the plan to A3) When I am absent, you (Bucha) will be in charge. The person who collects information will be an outsider. He will not be added in the group for the time being. We are discussing to fix the target. The suggestion is M.T.Ramesh. Once we study him well, we will fix the target. Once the target is fixed, we will give his photo. A3:- Ok. I do not know persons in Kerala. You discuss about fixation of target. A1:- Please inform if anybody is willing for Isthishadhi (Suicide attack). We can move to the next step. A3:- Isthishadhi ? What is the meaning? Shahada attack? A1:- Yes. Correct. A5:- The target is not fixed so far. A1:- Rayyan. What about BJP Programme? A5:- All National Leaders and Ministers will be present. A1:- Let us discuss here. Ahamadeeyas are good targets. But we first need a Sanghi. Its power is really different. A5:- Its effect too. Should we

pass information to other cells. **For effect... A1:-** Nobody in any cell will be identified. Because of that they will not be attacked and that is why no need for preparation (for defence) is required. **It is true that there will be counter attack when we claim the responsibility, if our plan works out. It is quite natural. Some instances like Maaradu or similar to that occurred at Punnad when Ashwini went. Few houses may be lost. We should accept such instances. It is part of the event.** A5:- Ok. Target? A1:- Rameskka. A5:- Please share his informations which the people here knows about. A1:- I do not have any idea. But I know one thing. He used to go to Kozhikode for television interview. A5:- It is not so frequent. Is there any information about him in the Internet? Like profile? A1:- No, not in my knowledge. **You must make use maximum of the person who was introduced by me. He has got a bike. Ask him to collect maximum information.** A5:- Available in Wiki. A1:- **We need atleast 2-3 targets. Only 3 days time. Within that time atleast one should be gone. The second target can be some Ahamadeeyas.** A5:- **Shall we not take video?** A1:- **Video is required. I will arrange it.** A5:- The study (collecting information) is progressing. A2:- Masha Allah. A4:- Assalamu Alaikum. (What happened) No discussion takes place... In the group named Real Thinkers, there is a discussion. A5:- (Posts a page of Mathrubhumi online daily which covers BJP National Council meeting). Mathrubhumi gave a page for them. A3:- Amit Shah, Rajnadh Singh, Modi, Sasikala etc... Leaders of khafirs arrived at Calicut. Today and tomorrow Sanghis are meeting. A5:- (Posts an attachment) But Mathrubhumi. A2:- Assalamu Alaikum A4:- Waalaikum Assalam.

(171) When the conversation in the said group is closely analysed, I am unable to accept the contentions made by the learned defence counsel. The members of the group are not merely voicing their

vague desire or an indefinite idea. They have set forth a concrete plan and formulated various steps to execute the plan. Each of them (except A4) actively participated in the discussion and they all united in one decision, i.e., to eliminate their target. The discussion started with their apprehension about the war declared by RSS against Muslims and when it proceeded further they unanimously fixed their target as Shri.M.T.Ramesh, a leader of political party having nexus with RSS. The members made threadbare discussion about the modalities to be adopted while executing their plan. Persons are deputed to observe and study the daily routine of their target. One of the members (A5) was deputed to meet an outsider to ensure that he would help them in gathering information about the route, vehicle, places of visit etc. of Shri.M.T.Ramesh. It is also proved that A5 had met PW13 with the above said objective. The personal chat found in Ext.P121(i) series makes it explicit that both of them met as directed by A1.

(172) A1 and A3 had undertaken a long discussion about the weapon to be used and at last, they decided to have it from Tamil Nadu and to hand it over to A2. A1 assured them that there would be a completely safe shelter, once the plan is executed. They had also discussed about escape plan when they succeeded in execution. A1 was careful enough even to fix A5 as the alternate leader in charge, in case A1 is not able to participate in the action. All of them were very conscious not to reveal any one of their identity or even their kuniya names. They reassured that they would not mention their real or kuniya name even when they actually meet. It is true that they were not so certain about the target as Shri.M.T.Ramesh, until they completely 'study' him. They agreed that if the information gathered about him reveals any difficulty to terminate him, they could consider somebody else as the target, but one thing was certain and all of

them were in perfect agreement; their first target must be an RSS leader. On the top of all, A1 had mastermind the plot with an impeccable foresight that at least one of the three targets must be eliminated within the short stint he could spare in Kerala. Therefore, the chat conversations in between A1, A2, A3 and A5 prove beyond any doubt that they had actually agreed to commit an illegal act. i.e., to kill a political leader in Calicut within the time frame fixed by A1.

(173) Another defence contention is that the discussion made in the group does not crystallize to the form of a concrete plan to commit an illegal act, but it remained in the realm of imagination. This argument would have been impressive, had they did not meet PW13 for the purpose of implementing their plan or they did not meet at Kanakamala in contemplation of their criminal plot. A1 came down from Qatar to Kozhikode, for executing their design to commit the murder. A2 and A3 also followed suit, by coming from Chennai and Coimbatore. They decided to impart training as well, in the meeting. In fact, for proving the charge of conspiracy *to commit an offence*, it is not necessary that some acts besides the bare agreement should have been done. This is evident from the proviso to section 120A of IPC itself. (“Provided that no agreement *except an agreement to commit an offence* shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof”).

(174) If anyone has any doubt that whether the said chats are enough to attract the basic ingredients of criminal conspiracy, a reading of the discussion in another telegram group named ‘Taswib’ will dispel all misgivings.

Discussion in the telegram group 'Taswib':

(175) Ext.P121(b), as proved through PW92, is the conversations in the said group, which were retrieved from the mobile phone of A2. This was also found from MO4 seized from A3 and MO21 seized from A4. The participants in the group are A7 with the display name Akhi, A1 with the display number 527, A4 as Aadam Ahammed, A2 as Bilal and A3 in the name Abdul Azeez. The discussion available in Ext.P121(b) starts from 28.08.2016 at 10:40:52 p.m. and ends at 01.10.2016 at 06:55:12 p.m. As did above, a meaningful translation of the chats found in Ext.P121(b) is given below with slight changes in abbreviations and such other similar matters for the ease of reading, leaving out insignificant comments.

A7:- Let us give a name to the operation first. A1:- Knowledge is for different purpose Amu. **A4:-** I am a little busy. Brother is admitted in hospital. **A1:-** What happened? You can give us all details and instructions. Amu, what happened to you? **A7:-** Let me have clarifications. Who is driver? Who is executor ? **A1:-** If Amu cannot join with us as driver, there is a problem. Yusuf will be the one doing it, Insha Allah. **Kochappa (nickname of A7), give the location and other details. A7:- Ideally, the driver will pick the executor on the way. A4:-** My brother is hospitalised. **A1:-** Amu is in Calicut. Yusuf is staying in Tamil Nadu right now. Amu is not in the city. **A7:- Our target location is Kodaikanal. A1:- Oh... Then Bucha is better. He is in Tamil Nadu. A7:-** So first duty is to study the route and from where the driver can pick the executor. Second duty is to purchase necessary things. **A1:-** How about target? How about Faizal? Do we have picture or photograph? **A7:-** He is not fit for these type of works. He is good for social media. **A1:- Do we have a specific person as our aim? A7:-** No. (Then posted voice messages) **A1:-** Have

you visited the place before? There may be several places in which parties are arranged. How do we find out the person who we targeted? A7 (Voice message) A1:- Good. I hope I can be with them. A7:- **A note for you. Give special attention to these while training.** A1:- **When will we get gun? It is very helpful for Kozhikode plan.** A7:- You are attacking a group of people who are in a party. What will be their response? How will you manage to tackle it? (Voice message) A7:- **You are not going to attack a single person. A group of people. Therefore, the training must be aimed to attack a group of people. Those who are your target may be well versed in martial arts.** A1:- Yes. When there are more people, it is better. A7:- **Our target is their face.** A1:- **Our team should contain four members.** A7:- **You can spray poison directly to their face. If possible, to the mouth.** A1:- Good. A7:- We can kick down, the poisoned one. A1:- **Where will we get poison ?** A7:- **You will get both the poison and gun from one place.** But you should arrange knife. A1:- **Ok. Done.** A2:- I got a rough idea about things. As said by Kochappa we should go there and study the location. I have a doubt. We have beard. It creates trouble. How will we manage it ? We can cover our face with a towel, at the time of execution. My doubt No.2: Is the party of our target indoor or outdoor? A7 (voice) A4:- Assalamu Alaikum A2:- How is your brother Amu. A4:- He is fine. But some difficulties. A4:- You can trim the beard gradually. If the plan is to be done during November or December, I may not be available in the local station. A7:- There is new development. The leadership of this mission will be taken over by another person. He will talk with you and will assess your capabilities. A4:- Ok. A7:- **Then only, state (ISIS) will provide tool and will take the responsibility of attack.** A4:- Is he a Keralite? (Mallu) A7:- **Mission will be given to other guys.** We have planned these much and it is disgusting if **someone else execute it. But it is an order from the state (ISIS)** A4:- Is

it possible to record voice? A7:- No record please. So guys I am going to give your telegram ID to him. **Once again who is executor, who is driver? Target date is first week of November.** A4:- I don't know whether I am available here or not. A7:- Why? Plan your trip after the mission. A4:- I am trying for it. A7:- Are you the driver? It is night. Long drive. The road is very narrow. That is why I repeated, we need a trained driver. Return drive is more tough. A4:- Yes. A7:- Then, don't just try, make it happen please (A7 furnishes ID of Abu Esa). He will contact you guys. A4:- I am not experienced in long drive. A7:- The discussion here is stopping for the time being. I hope you guys will not disappoint me and the mission will not go from our hands. A2:- **No. We need this mission.** Kochappa, do we need a car? In case Abu Muad (A4) is not available, can we use bike? Abu Muad, you know how to drive very well. So it is doesn't matter whether it is long or short. A7:- I prefer jeep. (Further discussion of A7 and A2 about suitability of vehicle is omitted). While the executor is doing his job, the driver will make 'U' turn and get ready the vehicle to exit. A2:- Brother, I am confused. **Our target is at Kodaikanal.** Then it is uphill on the way and descending in our return journey. Isn't it? A7:- You need to go again from Kodaikanal. Road up to Kodaikanal is very smooth. **I am talking about the road to our specific target.** A2:- Ok. Now it is clear. A7:- **You need to exit as soon as the work is finished. You have around 30 minutes to exit from Kodaikanal because police will take atleast 30 minutes to react.** Most probably they will start action from next day morning only. Meanwhile you can safely exit from Kodaikanal. But you need a skilled driver and a trustable vehicle. Otherwise you will be stuck there. Further, you guys will be in a hurry. Hurry makes things worse. A1:- Please excuse me today. I will join you tomorrow. **Kochappa (A7), another individual attack will be taking place. Within 15 days, Insha Allah.** So please inform our statute to declare officially

and also to update at amaq (Meaning of sentence is not clear. Exact reproduction). It will help us to reach more people. **Also Kochappa, in the coming days there will be a leadership meet of BJP at Calicut. This is the best time to plant a bomb. Can you do it?** A2:- Will we get Amu to drive? A1:- Our entire planning depends on Amu otherwise, we will be in trouble. A2:- I have another person in my mind. He is with us. He is friend of Bucha. He is a 'sahayee' and a very good driver. A4:- Please forgive me. I was very busy in the last few days. I read the discussion. I am not in a position to participate in an operation. I have personal and health issues. I will support from outside. I am in a different mission. I think Muthuka stated it above. Need not detach me. I have a joint problem in my knee. I cannot take strain with knee and long drive is not possible. Trying to cure it before Yathra (Migration to ISIS). Please pray for me. Further, I may go abroad before November. A2:- Anyway, we are trying for another driver. Let the God help Amu (A4) for a speedy recovery and to take part in our project. A4:- Aameen. A2:- If we are not getting a driver I will try though I have no experience or licence, but it can be taken within 15 days. If a car is taken on rent, I can practice as well. A1:- Yusuf (A2), **get ready to drive. We need two persons. Driver and executor. When Yusuf becomes the driver, who will be our executor?** A2:- Muthukka (A1) or Bucha (A3) will become the executor. **The first priority Muthukka, second priority Amu, if he is available and couldn't drive, third priority Bucha.** A7:- Remove Amu (A4). Add Bucha (A3) here. A1:- Amu, no need. He doesn't have role here. A7:- **Executor and driver – both should visit the place. We are planning to do it in the second week of November. Before that, you should study the place very well.** A3:- It is correct. A7:- **Our target is Vattakanal which is 8 k.m. away from Kodaikanal. When you attempt a trial, you should reach there in the morning. Tourists start to visit this place from October. Mainly Jews.**

They are our target. Magic Mashroom and Ganja - these two are their aim. There will be almost no security, for their privacy. It is our advantage. The property could be identified easily as in that area there are several cottages. **Jews will conduct party inside or outside the cottages and such cottage can easily be identified by one thing. They will have fire in front of the cottages. Only Jews have the permission to make fire in that place.** Their campfire has a peculiarity. Jews have a symbol. You can see this in Wikipedia. It is like a spear. But it has 5 prongs. They will set the fire in that shape. **If there is no party outside the cottage, then the most probable place to get them is a restaurant named "Kodai Haven".** When you visit the place you should study this restaurant specifically. A3:- Ok. A7:- **Kodai Haven has three floors having about seven rooms.** For privacy, staff stay in a different floor. **You should do it without their knowledge. If the staff come to know, finish them. Else they will inform the police.** If you study the place you will get a clear cut idea. The route to Vattakanal to Kodaikanal is very narrow. Only one vehicle can pass at a time. **As we execute our work in the night, there will be no traffic.** Narrow route. Sharp hairpin curves. Difficult to turn the vehicle. Darkness every where. Anxiety to come back after execution – This is why I insisted for a skilled driver, from the very beginning. **When you visit the place, if you go with a vehicle, it amounts to a trial.** You must try in the day time as well as night time. In front of Kodai Haven, there is a gate. You can turn your vehicle near that gate, if you are skilled. **The moment executor gets down from the vehicle the driver should turn it. Leave the place as soon as the executor comes back. The job of executor is to kill all those persons who come in front of him. There may be ladies. It is not an issue. They also belong to that group, as Rasool said.** The last thing we need is the abundant blessings of Allah. This will be our first operation. Its success depends on

Allah. We should develop the quality to get success in it. Anybody has any doubt? Brother Abu Easa will contact you soon. **A3:- Insha Allah. Aameen. Two persons enough?** I become part of this group yesterday, so I don't know the full details, but Yusuf gave me a rough idea. Who should go? **What is my role?** **A7:- What you can do ? Driver or executor ?** **A3:-** I could not drive. I have a doubt. What will be our weapon? **A2:- Bucha, it should be knife and poison.** **A3:- Knife smeared with poison !** **A2:-** There will be a gun for emergency. **A3:-** From where we will get it ? **A2:- We will get it. It will be manage by Muthukka and Kochappa (A1 and A7). Poison spray is our main weapon. We can also use knife. If we have no other option, we can use gun. But the main aim of gun is to scare them. Gun shot will create noise. It is dangerous. Two persons will go. One driver and one executor. I am the driver and you will be the executive (Executor).** **A3:-** Two persons enough? **A2:-** Kochappa (A7) said it is enough, as they will be under the spell of Ganja. **A3:-** Ok. **How many is our minimum target?** **A2:-** There is no minimum or maximum. As much as possible. **A3:-** Kochappa I have a doubt. 1) How we arrange vehicle? 2) Should we change the number plate? 3) Can we change the colour of the vehicle by using sticker? **A2:-** Can you put that symbol of Jews here? (A description of Vattakanal seemed to be copied from Wikipedia, is posted there by A3 which includes a statement that 'Vattakanal is better known as little Israel as a large number of Israel tourist who flock there from October onwards.' He also posted an attachment.) **A3:-** They will make fire like this.(Posts an attachment) This is the main street road. **A2:-** Whether do you find this? No gorge (steep hill) is seen here. **A3:-** It is very risky to ride through this road. You must be very careful. There is gorge. **A2:-** Ok, I am confident. We have Allah. **A3:-** Will we take on rent or should we use our own? Why should we use a car? Why cannot we use bike? It is easier. **A2:-** Can we hide the tools in

a bike? **There is a good news. We may get a driver. Then he will ride and myself and Butcha will be executives (executors). Number of executives is not an issue. Isn't it?** Muthukka and Kochapa should comment on it. **A1:-** It is ok. I accept it. Idea of three persons. One should drive. If two are there (for execution), it will be thrilling. **A3:-** Ok. Insha Allah. Alhamdullillah. **A1:-** **Now we only need a confirmation from Kochappa. A2:-** **Don't we need money for our project? I am embarrassed to ask this.** But the condition of myself and Bucha is not well. That is why I asked. Money is mainly needed for taking the vehicle on rent. **A7:-** Vehicle is the weakest link in our project. Investigation starts from this vehicle. Need not change the colour. We will execute in night and hence colour is no issue. You should change the number plate and make corrections in the copy of RC book. Do not use your own vehicle. **I agree for three persons. All should use monkey cap. It is your mask. Keep chilly powder with you while you go for execution. You should splash it after the work to avoid sniffer dogs.** This job can be done by the third man. You visit the place immediately. **Do not worry about money. Somebody in Gate (another telegram group) will help us.** Need not reveal the purpose. **A2:-** Kochappa, can you explain how to make a bomb? I want to learn how to make it. I need powder and detonator. I have such a request from ansar. Can you help? (After two days) **A3:-** **The accident happened on the way to Kadaikanal.** (This statement seems to be a continuation of discussion in another telegram group, where A3 said he met with an accident). **A7:-** **Is it in our road ?** **A3:-** **Yes. When I reached near Pazhani.** **A7:-** **May Allah reward you. Your trip was in preparation of Jihad which itself is part of Jihad and your injury is during Jihad. It is Ajar. Be patient and thankful to Allah. Try again please.** **A3:-** **Yes. Because of that I went there with some speed. This is only a small injury.** **A7:-** **About money. Brother Ibn-Abdulla will help us. Not a big amount. Around**

15,000/- **Who will collect it?** While collecting, there is no need to tell him the details. His details also should not be shared with our fellow brothers. (ithara ansarukal). **A2:- What should I do?** Please give me magazine for making bomb. **A7:- You should chat with brother Ibn-Abdulla. He will send money through Western Union. Give your name and address.** **A2:-** For receiving cash? I do not know the process of collecting money through Western Union (both of them made an elaborate discussion about exchanging money through Western Union and furnishing details for that etc.) **A7:- There is a direction of Paricha (ISIS). We should change to 'chatsecure'. Our further discussions must be in chatsecure. All should change to chatsecure. Then we should leave this group.** **A2:-** Insha Allah. **A7:-** Did you contact Ibn Abdulla? **A2:-** Yes. I contacted. I will create chatsecure today. (After few days) **A7:- What is the progress? They are asking updates.** Tools will be ready in one week. **Driver is ready. Me and Butcha will be executive.** **A7:- Did you receive the cash? Did you visit the place?** **A2:-** I receive money. I will visit the place October second week. **A7:-** We have only few days ahead. **A2:- Vehicle is ready.** Few practice session is remaining. **Muthukka will come on Sunday.** Insha Allah. (Then A2 and A7 made discussion about how RC book of a vehicle could be faked) **A7:- Did you buy dress?** Monkey cap, sweater and shall. **A2:-** Will buy this Sunday. **A7:-** You buy cheap dresses. We should set them ablaze after execution. **You will soon be informed about the place and time for collecting tools.** Yusuf, can you collect it? Else let Muthukka go. **A2:-** Can anyone else go? Bucha? I received Rs.18,000/-. If nobody else can, I will. **Where is the place?**

(176) The upshot of the conversations is that A7 made an elaborate and fine plan to exterminate as many as possible Jews who are visiting Vattakanal. He gave a picturesque description of Vattakanal, Kodai

Haven, the cottages and the perimeter of the location where the targets would be ordinarily found. A1, A2 and A3 were in complete agreement with A7. They decided to use gun and poison, presumably supplied by ISIS. They decided to collect it in few days. Above all, A7 made arrangements with Ibnu Abdulla (A8) to send money to meet the expense of a rented vehicle and as a result, ₹18,000/- was sent by A8 to A2. A2 received the money and he said he had arranged the vehicle. They decided to fake the RC book and the number plate of the vehicle. A3 claimed that he went to see the place of execution and on his way, met with an accident and sustained injury. Thus, it can easily be found that their plan was real, apparent and concrete one and they actually agreed to kill Jews. Therefore, it can be concluded that A1, A2, A3, A5 and A7 had agreed to do an illegal act viz. to kill an RSS leader and A1, A2, A3 and A7 agreed to kill as many as possible Jews, who would be found at Vattakkanal.

(177) Having found that A1, A2, A3 and A5 had conspired together as aforesaid, the matter remains to be resolved is whether A4, A6 and A8 had similar role in the conspiracy. A4 and A8 were members of various telegram groups, though A6 is not a member in any groups. Both of them are in the groups 'The Gate', 'Bab-Al-Noor', 'Darul Fikr' and 'Play Ground'. A4 is also a member in the core groups named 'Taswib' and 'Knowledge'.

(178) The discussion made above is not sufficient to show that A4 and A8 are also involved in the conspiracy to kill someone in Calicut or Kodaikkanal. This aspect will be dealt with in detail in the next point. But, at present, it can easily be found that A4 and A8 were also fully aware of the purpose of those groups and they had also contributed enough support from their own side. One of the underlying aims of those groups was to

promote ideology of ISIS and to extent support to the organisation to further its activity. In the telegram group named Darul Fikr, A7 declared that their channel has got official approval. A7 as well as A1 revealed to everyone that A7 has been appointed as the 'Ameer' of the group by ISIS. Subsequent to this declaration also, A4 and A8 made their contributions to the group and thereby supported ISIS. When A7 had asked the members to spread a book of Ibn Nuhaas in Malayalam (Gate, 16.08.2016, 07:24 AM), A4 seemed to have agreed to it. Later, A4 sent A6 the said book in Malayalam (Ext. P121(l)(16)). PW21 also deposed that A4 had sent this book to him. True, Ibn Nuhaas is admittedly an Islamic Scholar of 6th century. But, it is evident from the chats in these groups that they wanted to use that book for propagating the ideology of ISIS. In addition to all, A4 has carried out many translation works for A7.

(179) A8 has sent money to A2, on the demand made by A7. Even when the immediate purpose for which it was sent was not seemingly revealed to A8, he had every reasons to believe that he was sending money to one of the prominent members of the group and for their general object. It was one of the hot topics of the group that a Wilaya of ISIS has to be started in Kerala. All these acts amount to their agreement to do an illegal act i.e., to support the proscribed organization for furthering its activities in Kerala, and of course, the above said accused persons were also in agreement with them in that regard. Whether it would amount to an agreement to do a terrorist act, is a different question and it will be discussed later.

Role of A6 in the criminal conspiracy

(180) It is forcefully argued by the learned Public Prosecutor that though A6 was not a member in any of the groups, Exhibit P121(j) series

Facebook messenger chats retrieved from his mobile phone prove his role in the conspiracy, especially when he was also part of the assemblage in Kanakamala. He contented that the evidence of PW21 that A6 and A4 had motivated him about ISIS ideology, also shows the real intention with which A6 went to Kanakamala. It is also pointed out that even when A1 had clearly revealed that he was in Doulathul Islam (ISIS), A6 did not stop the chat conversation and instead, encouraged him by cautioning that he should move carefully and by further declaring that they are brothers. Shri.Arjun further argued that when A1 had parted with secret words like 'Padavu' for PGP, 'Madrasa' for ISIS etc., and when he made directions to create fake accounts and to contact Yousuf (A2), A6 obediently followed the directions, and thus there is reasonable ground to believe that he had also conspired together with A1 and A2 to commit the said offences. It is also contented that A6 had secretly chatted with A1 and A2 in some other secured modes and had created an account named 'wanderer111' for that purpose, besides accepting the kuniya name assigned to him.

(181) It is already proved that A6 had participated in the meeting at Kanakamala, along with the other accused. His mobile phone contained chat conversations he made with A1 and A2. Indubitably, A1 had conveyed A6 that he was with Doulathul Islam. Still, A6 continued to chat with him and later declared that they are brothers. When A1 informed that there would be a meeting next week, A6 conceded to the invitation. He was very careful about avoiding discussion in open platforms like Facebook and was keen to adopt secured modes of communication. But none of the above said acts do not lead to an inference that he was also privy to the said conspiracy. Indeed, all these acts create strong doubt about his conduct. But it has no place in criminal trial, even under section 10 of the Evidence Act.

What is required in law is, reasonable ground to believe that he conspired together with A1 and A2 to commit an offence. As rightly pointed out by the learned defence counsel, dozens of materials were seized from his residence at Bangalore. His laptop and many other electronic devices were subjected to examination. Nothing was unearthed to show that he had any connection with ISIS or similar extremist cadre. The general topic of discussion between A1 and A6 was Islamic way of life and, though one may deduce from the discussion that he was inclined to accept the views of ISIS on such matters, but nothing more.

(182) Of course, here arise the relevance of evidence of PW21. He deposed that during the end of 2014, A6 or one Ajas showed him ISIS related videos in the laptop of A6 at Kozhikode and had given two DVDs containing those videos. He further deposed that during 2015, he went to Munnar along with A6, A4, one Ajas and Noufal in the car of A6. At Munnar A6, A4 and Ajas showed him video relating to ISIS in a laptop and then A6 told him that ISIS leader Bagdadi is the Khalifa of Muslim community and this message has to be brought to all Muslims, for which they were downloading videos, and PW21 should propagate the said idea. He further deposed that A6 and A4 thereby propagated ISIS ideology. PW21 correctly identified A6 during trial.

(183) However, it is evident from the testimony of PW21 that the first incident occurred during 2014 and the second one in the first part of 2015. ISIS had been incorporated in the first schedule of U.A.(P) Act only on **16.02.2015**. In the absence of any material to show that A6 motivated PW21 about ISIS subsequent to 16.02.2015, it cannot be considered as an offence. Nevertheless, the learned Public Prosecutor contended that even before including ISIS in the first schedule on 16.02.2015, the said entity

was virtually enlisted in the schedule through a different method. He pointed out that, apart from those express entries, the organisations which are enlisted in the schedule of UN Prevention and Suppression of Terrorism (Implementation of Security Council Resolution) Order, 2007 ('UN Order', for short), are also in effect a proscribed terrorist organisation, as per entry No. 33 of the schedule. He contented that ISIS had been enlisted in the schedule of the UN Order, even in the year 2009.

(184) I am unable to accept these submissions. Section 35 of the UA(P) Act provides the manner in which an organisation can be incorporated in the first schedule. The only permissible mode is by notifying the name of the organisation in the official gazette. If so, even if the schedule contains an apparently flexible provision for automatic incorporation of any organisation which was subsequently included in the UN Order by amendments made from time to time, it is of no avail, unless there is a corresponding notification by the Central Government. Else, section 35 of the UA(P) Act becomes nugatory. Even though it was attempted to show that there was such a notification, when the notification dated 08.07.2009 produced by NIA is perused, I did not find that Islamic State(IS)/Islamic State of Iraq and Levant/Islamic State of Iraq and Syria/ Daesh or any of its manifestations is mentioned in it. The notification actually speaks about Al-Qaida which is also known as Islamic State of Iraq and its manifestations. It is to be remembered that subsequent Notifications specifically states that Al-Qaida is a precursor of ISIS. Further, Al-Qaida is another organisation enlisted in the schedule (Sl.No. 28) and hence it is hard to accept that the said notification is sufficient to rope in ISIS to the schedule, even before 16.02.2016. If the said notification has such an effect, entry No. 38 in the schedule becomes redundant, it is pointed out by

Shri.Shereef, the learned counsel for A6. He submitted that the said proposition is also against the statement of witnesses in this case. According to PW21, Aboobacker-Al-Baghdadi declared Caliphate of ISIS only during 2014 and then all of their attention turned to that organisation and, thus it is unthinkable that ISIS was forbidden even from 2009, he contented.

(185) In addition to the above facts, I find some other obstacles to accept the contention of the learned Public Prosecutor. The charge framed against A6 (or A4) does not contain an allegation that he tried to recruit PW21 to ISIS. Even in the charge sheet submitted by NIA, there is no such specific allegation against them and that is why this aspect did not find a place in the charge. Interestingly, there is yet another question which has to be answered by the prosecution, before it appeals to invoke the evidence of PW21. It is the submission of the learned Public Prosecutor that the evidence of PW21 is sufficient to attract section 18B of the UA(P) Act. Section 18B attracts only when the twin conditions set out in the said provision are satisfied. The offence defined under section 18B is recruitment of a person for the commission of a terrorist act. In other words, the offender should recruit or cause to be recruited a person and such a recruitment must be for the commission of a terrorist act. Nobody has a case that PW21 was actually 'recruited'. There is also no case that he was at least attempted to be recruited for committing a terrorist act. His evidence speaks about two aspects alone. In the first occasion, either A6 or one Ajas showed him some videos relating to the activities of ISIS in the laptop of A6 and he gave PW21 those videos in two DVDs. In the second occasion, A4, A6 and the said Ajas again showed him the videos of ISIS and A6 asked him to propagate that the leader of ISIS Baghdadi is the Khalifa of

Muslims. Both these matters will not amount to the offence of recruiting a person for a terrorist act.

(186) Whether the version of PW21 can be believed in its entirety is also a question posed by the learned defence counsel. There is no guarantee that the time frame stated by PW21 is exactly as he said. Even if there is nothing to disbelieve PW21, if he might have gone to Munnar a couple of months back, the said act of A6 (or A4) is no offence. Further, PW21 has an uncanny tendency to criminate A6. When it is brought out in cross examination that he had earlier stated that A6 followed a different path subsequent to their meeting, he denied it at first. Later, he admitted that he said so to the Investigating Officer and the Magistrate (under section 164 of Cr.PC). Even when he admitted that he made such a statement, he tried to improvise it by saying that what he meant by 'different path' was only that A6 went to Bangalore for studying engineering, whereas it was brought out in evidence that A6 had already done Engineering Course in CUSAT.

(187) However, it is persuasively argued by the learned Public Prosecutor that, if it is assumed for a moment that A6 had deviated from his previous path, then it should also be accepted that A1 has invited him to come back to their militant path, which A6 had wholeheartedly accepted, and thereby he finally reached Kanakamala. I have no difficulty to accept the contention of the learned Public Prosecutor that A6 has a strong inclination towards ISIS ideology and that is somewhat proved by PW21, regardless of the shortcomings pointed out in his evidence. It is also unquestionable that A6 chatted with A1 not merely as a curious onlooker. There is no substance in the contention raised by the learned defence counsel that A6 had interacted with A1 only to gather information about the

present world Islamic movements. When the chat conversation made between them are read as a whole, it is obvious that he had a disposition to the ideas expressed by A1. A6 even went to the extent of using computer applications for covert communications with A1 and A2, and of course, he participated in their crucial meeting.

(188) Nevertheless, at the risk of repetition, it must be said that none of the above facts show that he has actually any connection with ISIS or with the gang under the leadership of A7. Apart from Exhibit P121(j) series conversation between A6, A1 and A2, there is no material to establish the alleged criminal liability upon him. What is proved through Exhibit P121(j) does not show that he had any knowledge about the plan of the criminal gang under the leadership of A1. There is also no proof that he was informed about their design to kill RSS leaders or Jews. As per the available evidence, he was also not informed that they are going to start a vilayath of ISIS in Kerala or that some of them are preparing to migrate to ISIS.

(189) The militant organizations, on the one hand, may promote some religious or political ideologies which may initially attract vulnerable and innocent youth, but who may eventually be recruited to execute their dreadful crimes, in complete forgetfulness of the principles they propagated. But, unless a person actually supports a terrorist organization with the intention to further its activity, he cannot be punished under the UA(P) Act for his ideological bend of mind.

(190) Anyway, after having chatted in detail about the necessity to interact in a secured mode and also after accepting a kuniya name given by A2, it is not possible to believe that A6 went to Kanakamala for sightseeing. But at the same time, he might have been influenced by the

perceived scholarly of A1 in Islamic principles as well as ISIS manifestations, rather than to indulge in the activities of ISIS in Kerala or to commit a terrorist act. He might have shown secrecy because he is aware that anything related to ISIS is a risky affair. The chats between the two did not show any such plans. Hence, out of these two possibilities, the one which is favourable to him could not be ruled out.

(191) Even if A6 joined A1 with the full knowledge that A1 is a person who supports ISIS, that itself will not amount to an offence under section 38 or 39 of the UA(P) Act. He might have supported ISIS ideology at a time when ISIS was not included in the schedule of UA(P) Act and he might have given company to A1 and A2 at Kanakamala, knowing well that they also support it. Mere participation in such a meeting, unlike the meeting of a banned organization, is not sufficient to fasten criminal liability upon A6. True, he had made certain secret chat conversations with A1 and A2 either in telegram or in his Facebook ID 'varoo irikkoo'. It seems that he accepted the Kuniya name offered by A2 as 'Cheppu'. Until these secret messages conveyed between them are unearthed, no inference is possible that he had agreed to commit any illegal acts. No doubt, the prosecution has some justifications in booking him in this case. But the evidence let in is insufficient to mulct criminal liability upon A6.

(192) **Conclusion:** From the evidence discussed above, it can safely be concluded that A1, A2, A3, A5 and A7 had agreed to do an illegal act to kill people in Calicut or Vattakkanal. A4 and A8 had also agreed to do an illegal act, i.e., to support the proscribed organisation ISIS and to further its activities in Kerala. There is no evidence to show that A6 was privy to any conspiracy.

(193) **Point No.6 (did they conspire to commit a terrorist act):-** Terrorist act has a specific meaning as per the provisions of UA (P) Act. Not every murder or other similar diabolic crimes, even when it shakes the collective conscience of the society, will amount to a terrorist act. It is submitted by Shri.John.S.Ralph, the learned counsel for A3 that, mere association with a prohibited organization is not punishable under law and hence, unless a person actually did any act for that organization, he would not be liable for the offences under the UA(P) Act. He further contended that all the accused are youngsters who did not even cross 30 years and hence, the question whether they committed a terrorist act as defined under section 15 of the UA (P) Act has to be analysed with exactitude, especially when there is no overt act from the part of any of the accused persons. The learned counsel submitted that 'the doctrine of guilt by association' has no relevance in the context of UA(P) Act as it was clarified in **Sri Indra Das v. State of Assam (supra)**, following the decision of U.S. Supreme in **Elfbrandt v. Russell (1966 (384) US 17)**. Shri.Ralph further contended that, even if a person attended such a meeting, it would not attract an offence under section 39 of the UA(P) Act, unless he himself organized that meeting.

(194) Shri.P.C.Noushad, learned counsel for A5 submitted that, even if it is found that they have conspired to kill an RSS leader, that act does not amount to a terrorist act within the meaning of Section 15. The learned Public Prosecutor controverted these contentions by calling in aid the chat discussions, where the accused persons agreed that they should kill a prominent person in Kerala as part of establishing a vilayath of ISIS here and to spread its 'big effect' in the society, by circulating the video in respect of the murder.

(195) In order to see whether the agreed act amounts to a terrorist act as defined under section 15 of the UA(P) Act, it is beneficial to quote the relevant part of the said provision hereunder, giving emphasis on appropriate area.

15. Terrorist act. — (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) *by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—*

(i) *death of, or injuries to, any person or persons; or*

(ii) *loss of, or damage to, or destruction of, property; or*

(iii) * * * * *
* * * * *

(196) In this case, there is no allegation that the accused persons committed a terrorist act, but the assertion is that they conspired to commit a terrorist act and thus, what is to be looked into is only whether the act conspired amounts to a terrorist act. It is argued by the prosecution that to attract the offence under section 15, what is necessary is only that the offender did any act enumerated in clause (a), (b) or (c) of the said provision with the intent to strike terror or likely to strike terror in the people in India, by using any substance or by any other means of whatever nature to cause or likely to cause death of a person etc.

(197) In **Hitendra Vishnu Thakur v. State of Maharashtra (AIR 1994 SC 2623)**, the Hon'ble Supreme Court has held that the crime

committed by a terrorist and an ordinary criminal might be overlapping to a certain extent, but it is not the intention of the legislation that every criminal should be tried under such special laws dealing with terrorism, unless the fall out of his activity extends beyond the normal frontiers of the ordinary criminal activity. Thus, in fact, every act of the above said nature done by an offender, even with the intent to strike terror in the society will not come within the fold of section 15, which is enacted to cover only extremely serious criminal acts such as the one affecting the unity, integrity, security or sovereignty of India.

(198) At the same time, if the specified act is done with the intent to strike terror or likely to strike terror *in the people in India or any section of people in India*, then it invites a stringent treatment under the UA (P) Act, despite the fact that the offender did not use explosives or similar lethal means. Put it in other words, (in a case where the first limb of section 15 is absent) the intention of the offender must be striking terror (or it must be likely to strike terror) pan-India or at least in a section of the people in India, and it is not sufficient that it is likely to cause terror in the locality or the people in the immediate vicinity of the crime plot. The term '*with intent to strike terror in the people in India*' is very carefully and articulately drafted by the framers of the statute, to include only cases of such exceptional magnitude.

(199) Therefore, the question is whether the criminal plot of the accused persons falls within the said ambit. The discussion made above makes it unquestionably clear that they intent to kill an RSS leader not to avenge any personal wrong done to them. They were in search of a prominent person to kill as part of the launch of the unit of ISIS in Kerala. In a preliminary round discussion between them, one of the members

suggested the option to kill judges, including the two then serving judges of the Hon'ble High Court of Kerala. Later, when they formed a specialised group for the said sole purpose, they fixed their target as a political party leader. They remarkably declared that what they wanted by their act is to startle the entire people. They were very proud about the 'reach and effect' of such an act. There are discussions in the group that the act of killing should be video recorded and then telecast to people for such 'big effect and reach'. The very fact that they wanted to kill him with an intention to publicize their existence, speaks eloquently about their intention. They randomly chose a political leader to execute their plan. When they wanted to launch the unit of a terrorist organisation in Kerala and as part of it, when they wanted to cause terror in the mind of people by circulating the video tape, it is indefensibly falling under the provision of section 15. Their intention is of the magnitude envisaged in section 15 of the UA (P) Act. Besides, they intended to kill Jews with the same object. They prepared to kill as many as possible Jews, irrespective of the fact that there might be ladies. They were ready to use gun or poison expected to be supplied by ISIS. In this factual settings, the decisions referred to by Shri.P.C.Noushad or Shri.Shereef as to the scope of terrorist act, is of no help.

(200) However, the discussion made above did not conclude whether A4 and A8 were also enrolled in the conspiracy to commit a terrorist act. As the said question involves complex factual aspects, it is separately deal with hereunder.

Role of A4 and A8 in the conspiracy plot

(201) Shri.Arjun, the learned Public Prosecutor, fervently argued that the very membership in such secret groups using codes and kuniya names, where lot of discussions had been taken place as to starting of a

‘vilayath’ of ISIS in Kerala, attacking prominent persons in Kerala or Jews in Vattakkanal, itself shows their involvement in the conspiracy to commit a terrorist act. According to him, A4 is charged not for any of his knee-jerk reactions, but for his real, calculated and active contributions in the group chats. In the light of section 10 of the Indian Evidence Act, as there are sufficient grounds to believe that they had conspired together to commit an offence, everything said, done or written by the remaining accused persons are relevant facts as against both of them, he urged.

(202) The prosecution can fall back to section 10 only when *there is reasonable ground to believe* that a person had conspired with another to commit an offence. Then, in reference to their common intention, any acts of the other conspirator is relevant as against him also, provided that the said action was taken place after the time when the said intention was first entertained. This being the foundation of section 10, the first thing to be considered is whether there is *reasonable ground to believe* that A4 or A8 had conspired with any of the accused persons as to the matters they discussed.

(203) **A4 in Knowledge group:** Let us consider the case of A4 first. The learned counsel who appears for A4 submitted that in the Knowledge group A1 had specifically stated that A4 was not cooperating with their plan. The learned counsel further pointed out that in *Taswib*, A4 was removed from the group and instead, A3 was added in his place. According to him, in any groups, A4 never stated a new topic for discussion, and whatever offensive statements said to have been made by him in any other groups, it would not amount to a criminal offence.

(204) It is correct that in *Knowledge* group, A4 made comments only on four occasions. On 07.09.2016 at 10.08 p.m., he posted an emoji

and on the said day at 10.38 p.m., he attached a document. Nobody seems to have responded to the expressions made by A4, from which it appears that they were not relevant. On 22.09.2016 at 7.38 p.m., A4 greeted the members of the group by saying 'Assalam Alaikkum'. Later, at 08.01 p.m., he wrote 'no discussion is seen made' in the group (actually, a heated discussion was on its peak at that time) and 'there is a discussion in the group named Real Thinkers'. Though his greeting was replied by A2 and A3, nobody discussed anything with him. In short, A4 contributed nothing in the said group even though he was a member.

(205) Apart from that, A1 posted on 31.08.2016 at 7.47-7.49 p.m. that they were facing a serious contingency as there was no one to collect information about their target and that they would not get the help of A4. A1 further announced that he would entrust the role of A4 to somebody else. Later, on 31.08.2016 at 08.52 to 08.53 p.m., he said that they need a person to collect information, as A4 was not ready. The message further goes by saying that A4 might have his own justifications and thus the job was entrusted to another person (it was given to PW13). On 07.09.2016, A1 shared further progress about this matter by stating that A5 had taken the responsibility to properly instruct the newcomer in place of A4 and thus, they filled up the gap of A4. It is apparent from all these expressions that A4 had no role in the group at any point.

(206) It is relevant to note that at a previous stage, there were frequent discussions about the necessity to get aid from A4. Though all of them expected a lot from A4 as the job assigned to him was to study their target, not even on a single occasion A4 had responded to such comments made about him [the discussion can be seen in page No. 20, 24, 25, 34, 37, 38, 44, 58 of hard copy of Exhibit P121(c)]. When the conversations in the

said group is read together, I am absolutely unable to find that there is any reasonable ground to believe that A4 had conspired with the other members of the group to finish the said BJP leader or anybody else. On the contrary, it is declared by the leader of the troupe that A4 withdrew from his role, and to a certain extent, he justified A4 by attributing that he might be on his own plans.

(207) About this, the learned Public Prosecutor submitted that, as A4 was on preparation to do *hijrah*, A1 has justified him. It may be true, but there is nothing on record to show that he had actually prepared to migrate to ISIS. Prosecution did not even bring any record to show that A4 has got a valid passport and that he has taken any steps in this respect. True, he made some chats with A7 expressing his desire to undergo *hijrah*. Mere desire does not amount to preparation or attempt to join ISIS.

(208) **A4 in Taswib group** : After all, the matter under consideration is whether A4 had conspired with the other accused persons to ex-terminate their targets. In order to answer this, the chats in *Taswib* group are also relevant. Discussion in 'Taswib' had been taken place almost simultaneous to the discussion in 'Knowledge'. In 'Taswib', on 28.08.2016, A4 informed that he was bit busy as his brother was admitted in hospital. Then A1 said, if A4 was not ready to join them as a driver (to go to Vattakanal and to kill Jews), it would create a serious problem. On 29.08.2016, A4 informed that if their plan was during November or December, he would probably not available in India. Thereafter, they discussed on several occasions about their difficulty to find out an experienced driver. On none of the occasions A4 offered his help.

(209) When A7 cautioned the members that the mission would be taken over by another person and he would talk to them and assess their

capability, A4 asked A7 that, was that person a Keralite. Followed by that A7 informed everyone, “the target date is first week of November”. The immediate reaction of A4 was that “I don’t know whether I will be available here or not”. (Few moments back he said, he might not be there in ‘November-December’. Even when it was fixed to 1st week of November, he did not budge an inch). Then A7 commanded that he should be in the team and he should postpone his trip (hijrah) ‘after the mission’. A7 asserted that they were preparing for a long drive during night through a narrow road and hence they required a skilled driver like A4. Though A4 did not instantaneously decline to his demand, he came up next day with a detailed reply -

“A4:- Please forgive me. I was very busy in the last few days. I read the discussion. I am not in a position to participate in an operation. I have personal and health issues. I will support from outside. I am in a different mission. I think Muthuka stated it above. Need not detach me. I have a joint problem in my knee. I cannot take strain with knee and long drive is not possible. Trying to cure it before Yathra (Migration to ISIS). Please pray for me. Further, I may go abroad before November.”

(210) Subsequently, when A2 made a proposal that he would try to drive, A4 opined that the matters are not so simple (07.09.2016). Next day, A7 asked them that who would be the driver and the executor and then A2 suggested that A1 could be the executor, and in his absence, it could be A4. Immediately then, A7 announced that A4 should be removed from the group and A3 should be added in place. A1 also supported this by stating that A4 is not needed and that he did not have any role in the said plan. From the above discussion, it is evident that A4 did not expressly

agree to any of them as to their plan to murder Jews in Vattakkanal. Whenever his name was suggested as a member in the executing team, he expressed his inability to cooperate in one way or other. At first, he went on with an explanation that his brother was hospitalized. It is proved through the evidence of PW33 that his brother was in hospital only during 28.08.2016 and 29.08.2016. Even after a couple of weeks, A4 did not agree to join them despite the repeated requests made by his fellow members. Then he said that he was not in a position to participate in an operation. His explanation was that personal as well as physical reasons compelled him to take such a decision.

(211) At this point, it is argued by the learned Prosecutor that even while telling so, A4 expressed his allegiance to this terrorist gang by offering that he would support them from outside and that should not be detached from them, and these expressions clearly constitute agreement to commit the terrorist act. This contention cannot be accepted, as it is against the real meaning of the said statement made by A4, and all his previous stands. What A4 has actually conveyed by the message is very clear. He said he was not able to participate in an operation at that time for personal as well as physical reasons. His inability to co-operate with the mission was a heated discussion all along. His reluctance to co-operate with them was also evident. When, at the end, he made his mind absolutely clear, he used some superfluous terms. Merely because he said so, it could not be found that he had also agreed with the other persons in their plan. A4 is indeed a member of telegram groups under the leadership of A7. He has psychological, emotional and ideological bondage to A7 and other fellow members, who are also following his believes. Once he declared allegiance to them and moved in that group for a while, he may feel difficulty or

embarrassment to face away. Such a person can express even his dissent only in those words. In **Ram Narain v. CBI (AIR 2003 SC 2748)** it is observed by the Hon'ble Supreme Court that the following elements are necessary to constitute the offence of criminal conspiracy; *(a) an object to be accomplished (b) a plan or scheme embodying means to accomplish that object (c) an agreement or understanding between the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object by means embodied in the agreement or by any effectual means.* Such basic elements are absent in those conversations. The 'definite commitment to co-operate' is absent all throughout.

(212) It is of course arguable that A4 could have objected them in protest, had it been his real opinion and he could have walked out from them openly. He did not do so because he had also contributed offensive ideas to them and he is also not completely innocent. He definitely has culpable role in this case, which will be discussed later. But the present finding is only about his role in the main conspiracy viz. to kill the Jews in Vattakkanal. When each of his statements in the group is closely analyzed, I am of the view that the expression made by him that he would support them from outside and all, could not be treated as an agreement to do an illegal act within the meaning of section 120A of IPC, especially when he declared in the very same statement that he was in a different mission and he was unable to participate in an operation.

(213) **Abstinance of A4 to meet at Kanakamala:** There is one more reason to arrive at the above conclusion. Even though A4 made objectionable and horrendous comments in various other groups, including the one against the national interest, he did not participate in the meeting

at Kanakamala. The learned Public Prosecutor attempted to explain this circumstance as well by suggesting that A4 had sustained an injury on his hand, and when one of the purposes of the meeting was to impart physical training to the participants, he could not have naturally attend it. It is contented that his abstinence is not suggestive of his disagreement with the members of the group, but was the result of supervening impossibility.

(214) Certainly there is evidence of PW32 that A4 had sustained an injury on his hand. But when the expressions in the telegram groups are read together, the core members of the group considered their meeting as a grant event and then, even if one could not participate in the training, he would not have normally spared the opportunity to meet his fellow members and to join in their prime venture. Significantly, A4 went to Koyilandi police camp in obedience to the notice issued to him by PW84, on the very same day. He needed to take only the same effort to reach Kanakamala, as both places are equidistant from his house. He might have gone there with the assistance of somebody else, the learned Public Prosecutor impelled. It may also be true. But it is relevant to note that similar assistance was offered by A2 to A4, yet it was not seen accepted by A4. This will be evident from the following discussions found in Exhibit P121(d)(8), which is the personal chats made between A2 and A4, which were retrieved from MO11 mobile phone of A2.

(215) At the first instance, when A2 informed A4 that they have arranged a meeting and asked him to join them, he did not plainly express his willingness and instead, he said his sutures (for cut injury) were yet to be removed. When A2 persuaded him by saying that the meeting place was near to his house, then again A4 did not yield. On the contrary, he asked if he could not come, would they come to meet him. When A2

assertively stated that they could not come to his home, A4 further explained that he could not drive and if the meeting is on some other day, he might try. Right then, A2 asked him whether he could come if anyone of the group would arrange a pick-up from his home. Even to this offer, he did not completely agree, but said he might try. On 29.08.2016, when A2 again intimated him about the progress of their meet and that the participants should bring sports shoes, dress etc., A4 said he could not do it. Then A2 conveyed that the requirement of sports shoes was for the training session in the meeting but, the purpose of the assembly was both meeting and training and hence, A4 could at least participate in the meeting. Here also, A4 raised an objection that he could not come alone in a bus. On 01.10.2016, when A2 again contacted A4, he informed that he could not come probably. Then, A2 pressed him hard by saying that 'Muthukka' said that A4 should come. In reply, A4 said, he already discussed with Muthukka and concluded the conversation with the words 'Let things happen' (Kaaryangal Nadakkatte). 'If possible, try to come here' (his house). From the above discussion, I am of the firm opinion that, though A4 appears to be a bird of the same feather, he was reluctant to flock together with them, when it comes to practical movements or real operations.

(216) The learned Public Prosecutor, at this juncture, contended that A4's role in the conspiracy is not disclosed only through his participation in those groups, but through many other things. He also submitted that the conspiracy was not limited to kill the BJP leader or the Jews, but it extended to wage war against India, to attack Jamaath-e-Islami meeting and to recruit persons for terrorist acts etc. It is his forceful submission that being a member in all the core telegram groups and using Kuniya names to covertly act in accordance with the direction of A7, a

person in the actual war-front lead by ISIS in Afghanistan, are sufficient evidence to fasten criminal liability upon A4. A4 has done translation work for A7 for the purpose of propagating ISIS and that he had been in frequent contact with A2, A3, A6 and PW100 in addition to A7, the learned Prosecutor contended. The statements made by A4 in various groups like Bab-Al-Noor, The Gate and Darul Fikr would show his loyalty towards ISIS and that he intended to establish a 'vilayath' of ISIS in India, he urged.

(217) Were the statements made by A4 in the other groups would amount to abetment for waging war against India will be considered later. But, merely because A4 became a member in those secret core groups, and that he agreed to use Kuniya or code names as directed by A1 or others, it will not amount to a conspiracy to commit a terrorist act. Indeed, he made very objectionable statements in those groups and one of them went up to the extent that he loves to see India being attacked by anyone. At one point he announced that 'Allahu akbar. Proud to be a terrorist', when A2 said about the difficulties faced by Mohammad Nabi, when he strictly followed Islamic principles. On 24.08.2016, in the telegram group named 'Gate' PW100 asked a question that 'What are we waiting for?' Then A2 replied that 'We start with Mossadees' (Jews). In reply, A4 said that 'Inshah Allah'. It is contended by the learned Prosecutor that in Bab-Al-Noor, A1 asked others about their opinion to kill a person and then A4 agreed to it by saying that 'Inshah Allah'.

(218) However, it is the submission of the learned counsel for A4 that the term '*Inshah Allah*' is usually used by the people in Kerala to mean that 'if the God is willing', and thus, such an expression could not be considered as a tacit consent to kill, and at the best, he might have meant only that if the God proposes, he would be killed. It is also pointed out that

when A1 said about such facts and even conveyed that their target should be killed and the act should be video taped, A4 did not make any comment at all, and even on the coming days, he did not respond in the group.

(219) At any rate, it cannot be ignored that A4 did not proceed with the core group which was formed to actually kill the Jews. Instead, he virtually quit the group. Thus, such expressions made by him could only be treated as a general exhortations and it is not equivalent to form an agreement to do a particular illegal act (**Datta Threya Narayan Samanth vs. State of Maharashtra (supra)**).

(220) No doubt, A4 had personally chatted with A7 and once he informed A7 that he wanted to do *hijrah*, for which he needed the latter's help. The said act also will not amount to an offence of conspiracy, as what A4 chatted with A7 is only some general aspects, such as to convey regards to certain persons who said to have worked along with A7, even if they had joined ISIS earlier, and his desire to do *hijrah*.

(221) It is argued by the prosecution that messages of A4 in the telegram group Bab-Al-Noor and the Gate also reveal his role in the conspiracy. This submission is factually incorrect. The discussion in Bab-Al-Noor was in the form of general exhortation like sledging and hate propaganda against members of Sangh Parivar, Government of India, Ahamadiya sect, atheist group etc. None of those discussions crystallised to the shape of a concrete criminal plan. There is another discussion in this group where A1 said that they should kill members of Sangh Parivar for which they require two persons and then A4 asked, was anybody available. But when the context of those conversations are closely analysed, it can be seen that those were all part of a general discussion and not as a well designed criminal plot to implement what they suggested in that platform.

Such fiery comments may have the life of few seconds and when somebody comes up with an idea to implement them in practice, those persons who made the comment may resile back, which we have already seen in the case of A4. Indeed, it is not so for all others. We have seen that A1 and others made the very same discussion in 'Knowledge' and it actually attained the status of criminal conspiracy.

Complicity of A8 in the conspiracy hatched by other accused persons.

(222) As in the case of A4, A8 was also a member of the telegram group 'The Gate', 'Bab-Al-Noor', 'Darul Fikr' and 'Play Ground'. It is in evidence that he also used Kuniya name or code name and posted messages declaring his hatred towards India. From the discussion made above, it was concluded that mere expression of such opinion would not amount to criminal conspiracy, unless there is an agreement to commit an illegal act. The said observation is generally applicable in the matter of A8 as to his contumacious comments in the groups, and hence no separate treatment is required in his case.

(223) However, two acts of A8 are completely different from those and hence they require detailed discussion. First, he is the person who financed A2 and other members of the group 'Taswib' to make their plan to attack Jews happen. Secondly, he had close contact with A7 and he went along with him up to Iran seemingly for doing *hijrah* and thereby to join ISIS in Afghanistan. Even when it is proved that A8 had financed A2 as advised by A7, the chats in Taswib itself show that A7 had taken a decision not to communicate A8 the purpose for which the money was required. He specifically advised A2 that while he contacts A8, he should not reveal the purpose. In this circumstance, his act will not amount to a criminal

conspiracy to commit a terrorist act, as the said 'purpose' makes their act a terrorist act. Likewise, the act of A8 in sending money is also to be analysed in the light of section 18 of the UA(P) Act. For attracting that offence also, he should have sent money *with the knowledge* that by doing so, he was facilitating the commission of a terrorist act (or an act preparatory to its commission). Even when there are sufficient grounds to presume that A8 sent money with the knowledge that it would further the activity of a terrorist organisation in Kerala, there is absolutely no material to see that he did so with the knowledge that it would facilitate the commission of a terrorist act.

(224) Let us examine the evidence. From the evidence of PW67, PW93 and from Exhibit P103 air ticket booking details and Exhibit P146 passenger manifesto, it is proved that A8 had traveled in Flight No. FZ241 from Dubai to Tehran on 03.06.2016 along with A7. The air tickets for both passengers were booked by A7 and he paid the entire ticket price. In addition to this, PW80 was examined to prove MO66 series documents, which is the back up of WhatsApp chat conversations between A8 and a person named 'Mamu' which was found in the email of A8 with ID pk.mainu@gmail.com. It is produced before the court along with certificate under section 65B of the Evidence Act. In the said chat conversation, A8 informed Mamu that he was in Iran at that time and was waiting for a guide for a journey with no return. In this context, the evidence of PW76 is also very relevant. He deposed that when he met A8 and A7 on a Friday in March 2016 at a park in Abu Dhabi, A8 expressed his interest to join ISIS in Afghanistan by doing *hijrah* and on May 2016, A8 made enquiries at Iran Embassy in his presence, and it was for the purpose of joining ISIS in Afghanistan.

(225) Based on this evidence, the prosecution contended that A8 attempted to join ISIS in Afghanistan and for that purpose, he went up to Iran and at last when his family members compelled him to come back, he abandoned the plan and reached back Dubai and thus his act amounts to an offence punishable under section 18 of the UA(P) Act.

(226) The evidence discussed above clearly proves that A8 went to Iran along with A7 with a view to cross the borders of Afghanistan and to join ISIS. Even though Shri.P.C.Noushad contended that the evidence let in by the prosecution is insufficient to arrive at such a conclusion, I am of the firm view that the chat conversations extracted from the e-mail of A8, on the basis of the disclosure statement given by him to the Investigating Officer and the evidence of PW76, would sufficiently prove the said aspects. The version of PW76 is clearly corroborated by the chats seen made by A8 himself with Mamu and by the physical production of the air tickets and passenger manifesto in relation to his flight upto Iran. Until A8 reveals his email ID and password, the Investigating Agency was in darkness as to the materials found from the mail ID, and hence the said statement satisfies the test of confirmation by subsequent event, embodied in section 27 of the Evidence Act. If Ext.P 91 extracted materials comprising the printout of screen-shots of each steps taken while extracting the data is perused, it is clear that there is no reason to suspect the extraction process. The e-mail contains umpteen number of photographs of A8, some of which are got identified by his own sister PW65. However, the said evidence is totally insufficient to prove that A8 attempted to commit a terrorist act.

(227) **Elements necessary to constitute attempt to commit an offence:** An attempt to commit an offence is completed only when that act leads inevitably to the commission of offence, unless something, which the

doer of the act neither foresaw nor intended happens to prevent this. It must be an act done in part execution of a criminal design, amounting to more than preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. An accused is liable for attempt where his failure to commit is not due to any act or omission of his own, but to the intervention of some factor independent of his own volition (**Commentaries on Indian Penal Code by Ratanlal and Dhirajlal**, LexisNexis, 34th Edition, Page 1235 and 1238). Even though the Indian Courts do not strictly follow the rule of 'penultimate act' as a necessary ingredient of an attempt to commit an offence, in **State of Maharashtra v. Mohammad Yakub (AIR 1980 SC 1111)**, the Hon'ble Supreme Court has held that unless the person has done the *last proximate act* towards the commission of an offence, it cannot be said that he attempted to commit the offence. It is in evidence that A8 came back from Iran on his own volition, though he might have been compelled by his family members. When he changed his mind to commit the crime of joining ISIS and came back to Dubai, it is legally not possible to hold that he attempted to commit a crime.

(228) **Meeting of Jamaathe-e-Islami and the alleged conspiracy to attack it** : The following conversation in the Bab-Al-Noor group will clearly illustrate the difference between a well defined plan to commit an offence as we see in Taswib and mere heated comments which may appear to be an incitement to commit an offence. On 07.09.2016, at 4.25 p.m., A3 posted in Bab-Al-Noor that 'May I get a hammmmmar' (Hummer). Then A8 replied that 'Tipper lorry is better than hummer as it can be driven easily'. Then A3 replied that 'Nice. Allamdulillah'. After a

while, he said 'Nice.... Attack... it is exciting'. Later, another group member named *Ibn Al Qayyim* (not an accused) posted that *Koolavees* were meeting. It appears that he referred to the meeting of *Jamaat-e-Islami* scheduled to the very next day. One *Billa* (not an accused) then commented that all members were in a jovial mood (*Full comedy aanallo*). At this moment, *Ibn Al Qayyim* commented that a tipper lorry should be driven into their meeting. Nobody is seen made any comment about it thereafter. But it is in evidence that due to the intervention of Intelligence Agencies, the proposed meeting of *Jamaat-e-Islami* was shifted to some other location, expecting untoward incidents. If the court is called upon to treat the above discussion as a criminal conspiracy to attack the meeting of *Jamaat-e-Islami* as in the manner it happened in Nice, a place in Paris, it is only an absurdity, and it can be done only in complete forgetfulness of what had actually happened.

(229) In fact the said topic was started by a person named 'Izmamnik Biser'. He asked others 'I want FZ or R15'. It appears that FZ and R15 are two models of Yamaha Motor Bikes, which are popular among youngsters. Apparently, Biser asked, would he gets such a bike. It was in that context, A3 said he wants a hummer, a very costly vehicle. It was certainly a joke. Then A8 expressed an opinion that tipper lorry is better than Hummer. In reply, A3 made a comment seemingly recalling the truck attack happened in Nice, on 14.07.2016. Right then Qayyim commented that *Jamaath-e-Islami* was going to meet and later, he opined, by taking cue from the discussion about tipper lorry and hummer, that such a truck should be run into their meeting. The meeting was scheduled to the very next day. A3 was at that time in Coimbatore and A8 was abroad. Prosecution has no case that anybody had taken any steps to arrange a lorry or driver to drive it into that meeting. Later, on 09.09.2016, there was a

discussion that, the idea suggested by the group members about attacking the meeting of Jamaat-e-Islami was seen leaked. A3 then commented that they made such a discussion in a light-hearted manner. But it is attempted to explain by the prosecution that A1 posted in Bab-Al-Noor later that they did not execute that plan. In fact, what A1 stated in Bab-Al-Noor is not at all in that way. A1 stated that their presence was discussed widely and that was a good sign. He further said that 'but that programme was not happened' (pinne aa paripadi nadannilla). The context in which he stated so makes it clear that he was referring to the programme of Jamat-e-Islami.

(230) This is also evident from the discussion in 'Gate'. On 09.09.2016, Bilal started a conversation that there were traitors in Bab-Al-Noor, who leaked the discussion they made about the tipper lorry attack to the Jamaat-e-Islami meeting. Suddenly, all of them became panicked and started to caution each other to be very careful. But, when A1 happened to see this discussion in the midway, he did not even understand the issue. Then A2 gave him a summary. Still, A1 said that, the discussion made by the media might be about the plan of somebody else, as it was not in the contemplation of their group to attack Jamaat-e-Islami. Only after repeated explanations given by A2, he became convinced that it was their own discussion which was leaked. Thus, it is beyond any doubt that the comment made by Qayyim that a tipper lorry should be driven into the meeting of Jamaat-e-Islami was just his wild idea, and there was no such conspiracy. The care shown by the intelligence agency in the above matter should be appreciated and the society should be grateful to them, but at the same time, the tendency to magnify such instances in the hindsight as conspiracy, is deeply disturbing.

Section 18 of the UA(P) Act and section 120A of the IPC :

(231) Section 18 of the UA(P) Act is wider than section 120A of the IPC and hence the question whether the acts done by A4 and A8 would attract that provision has to be considered now. Even when it is found that A8 sent money without knowing that it would be used for a terrorist act, it is necessary to consider whether the said act or his attempt to go to Afghanistan amounts to an offence mentioned in section 18. It is observed by *Shri.S.Abdul Khader Kunju* in his work on '*Counter Terrorism Laws in India*' (Asia Law House, 1st Edition, Page 145) that "Section 120B of IPC will not slap a liability to a person unless he is not in agreement with the other conspirators in respect of the fulfilment of its meaning. But to constitute the offence under section 18 of the Unlawful Activities (Prevention) Act, 1967, a person need not be in agreement with others. Any of the other acts mentioned in the section is enough". It is true that if we take the textual meaning of section 18, any act of advocating, advising, inciting the commission of a terrorist act (or any act preparatory to its commission) is enough to attract section 18. But it is implicit in section 18 that, a person is said to have advocated, abetted or advised or incited only when he really intended it. A mere comment made in a social media group, even when it may ultimately incited another, will not amount to a criminal act dealt with in section 18. In **State of Maharashtra v. Mayer Hans George (AIR 1965 SC 722)** it is declared by the Apex Court in no uncertain words that law presumes *mens rea* as an essential ingredient of every statutory offence, which can be rebutted only by express words in the statute. Hence, the components of section 18 should be understood in such a manner that a person said to have incited another when he actually intended that the other person should be incited by his act. For illustration, if a person posted in a social

media group that 'set ablaze the Red Fort', he could be caught under this provision only when he actually intended to incite the other members of the group to set it ablaze. Therefore, when A1 made a comment in Bab- Al-Noor group that they should teach RSS people a lesson for which a machete or GI pipe and two persons are necessary, if A4 reacts that would they get them, or in a similar situation if he say 'Insha Allah', I am unable to see that such comments would amount to an offence under section 18 of UA(P) Act.

(232) We are familiar with a social situation that many persons make intolerable and unhealthy comments in social media. In the present case, a distinction has to be drawn between the comments made in the group 'Taswib' or 'Knowledge' and the other groups. In the other groups, even though they have discussed many objectionable things and even went to the extent of opining that RSS leaders or Judges or Police Officials should be targetted, we cannot see there a well considered design to actually commit that crime. As observed in **Ram Narain case** (supra) the term 'agreement' within in the contemplation of section 120A is not this type of perceived consent.

(233) What emerges from the above analysis is that, if we take the general and sweeping comments made by A4 in the sense proposed by the learned Public Prosecutor, we should ignore what actually transpired otherwise. When the members of the group were badly in need of an experienced driver and even when A4 was known to be a good driver, he did not make a single comment and rather, at some point, he expressed his inability to join the team as a driver. For attending their meeting at Kanakamala, he was even offered a pick up facility, but it was not readily agreed by him and instead, he gradually expressed his unwillingness, though couched in a neutral tone. In the Knowledge group, he was

assigned with a lighter task, that is to observe the target and to report about his daily routine. He did not react positively to this call as well. On the other hand, A1 was forced to openly concede that A4 was reluctant to take up the task. When all these factors are in record, if this court is persuaded by only some of the expressions made by him at the time when he virtually signed off from the group, it may amount to injustice. No doubt, A4 is not an Indophile and some of his acts amount to an offence as defined under the UA(P) Act. But the finding made here is only that he had not conspired together with the other accused persons or incited or advocated them to commit a terrorist act.

(234) **Conclusion** :- The acts done by A1, A2, A3 and A5 amounts to a conspiracy to commit a terrorist act, whereas the acts of A4 and A8 do not amount to it. Their act also do not amount to abetting, advocating, advising or inciting or knowingly facilitating the commission of a terrorist act or an act preparatory to the commission of such act.

(235) **Points No. 7 & 8 (Did the accused persons wage war against the Government of India or collect men with the intention of doing so etc.?)** :- The prosecution contended that the accused had committed the offence of abetting waging of war against the Government of India which is punishable under section 121 of the IPC, besides the act of collecting men and otherwise preparing to wage such war, which is punishable under section 122 of the IPC. After the completion of evidence, the learned Prosecutor filed an application for altering the charge by adding section 121A of IPC, which provides punishment for conspiracy to commit waging war to overawe the Government by means of criminal force. Originally, section 121A was incorporated in the FIR, but it was omitted in the Final Report. As it is the settled law that even in the absence of a

separate charge for the offence of conspiracy, the court may convict the accused persons under that head, the said application was not disposed off at that time and now it should be considered whether the evidence available on record justifies the invocation of section 121A as well.

(236) The following aspects are relied on by the prosecution to contend that the illegal acts done by the accused persons amount to conspiracy to wage war, abetment of waging war and collection of men for waging war :

(a) On 09.09.2016, in the Bab-Al-Noor group, A1 has stated that democracy is shirk (sin), that in India, as per the present situation, Jihad is a must for Muslims to get freedom here and even the last democrat and secularist should be either killed or be ousted, that Muslims cannot refrain from armed war against these people either in person or as a group, and that Muslims must fight against all these and they should be governed by their own law.

(b) A1 asked in the same group on 04.09.2016 that if anyone knows to use AK or sniper. On 05.09.2016, A3 discussed with A7 supporting Tehrike Taliban Pakistan, which organisation is fighting a war against India. On the same day, there was a discussion about the right time to attack India, followed by the question raised by A4. On 08.09.2016, A1 has sought willingness from others for suicide attack. On 08.09.2016, in Bab-Al-Noor group, A1 and A5 discussed about collecting and using of bombs and attacking an Ahamadiya mosque.

(c) A2 stated in Bab-Al-Noor on 15.08.2016 that Independence Day should not be celebrated, that India is Kufur and Muslims cannot tolerate this. On 18.08.2016, he said that violent Jihad is the path for reaching heaven. In Darul Fikr, on 17.09.2016, A2 and A7 discussed about Islamic

law maintained by ISIS and the options available to other religious believers when Ghaswathul Hind (attack against India) takes place. On 18.09.2016, in the same group, A2 declared that he is a fundamentalist and terrorist.

(d) On 18.09.2016, A2 called Indian soldiers who died in Kashmir 'dogs' and proudly presented that ISIS sent 17 'dogs' to hell, about which A3 and A8 expressed joy. On 30.09.2016, in the same group, when A3, A4 and A7 discussed about India-Pakistan war, A4 said he wishes to see India being hit by anybody.

(e) On 16.08.2016, in Gate, A7 sated that they need to start a business of chemical as a cover for supplying raw materials for making explosives. Besides, A1 asked PW75 about availability of explosives. On 24.08.2016, A2 asked A1 a doubt on Jihad that from where one would find fund for the purpose of Jihad, then A1 said that by attacking individual groups, by kidnapping and by negotiating money, it could be found. Then PW100 said, by ATM robbery or on line hacking or by robbing jewellers etc., this could be obtained.

(f) In Gate on 14.08.2016, A7 asked everybody to furnish their profile and asked what they could do in jihad and he also advocated to volunteer two persons for jihad operation against Jews. Through a personal communication, A1 informed A7 that two persons were ready for this. On 18.08.2016, A2 in Gate asked everyone if he has to make explosives, should he buy it or make it, for their activities. A1 then said, they have to make it themselves and A8 acknowledged this, where A3 said it is not to safe to buy it. On one occasion, A4 declared that he is ready to be a 'Mujahid', if somebody is willing to sponsor him. When NIA seized their digital devices, there were soft copy of hand books on poison and bomb making from house hold items.

(g) When the accused persons met at Kanakamala, A1 declared to the assemblage that the situation of Muslims in India is pathetic and it is time to propagate ISIS ideology to others and the only way out is *Jihad* through ISIS, for which they have to collect men and explosives; and as a response in agreement to the said statement, A2, A3, A5 and A6 nodded.

(237) **Waging War-Meaning:** The expression 'waging war' is not defined in IPC and thus it means 'war' in the ordinary language. In **State v. Navjot Sandhu (AIR 2005 SC 3820)**, the Hon'ble Supreme Court considered the meaning of this term and held as follows :

"S.121 and 121A occur in the chapter "Offences against the State". The public peace is disturbed and the normal channels of the Government are disrupted by such offences which are aimed at subverting the authority of the Government or paralysing the constitutional machinery. The expression "war" preceded by the verb "wages" admits of many shades of meaning and defies a definition with exactitude though it appeared to be an unambiguous phraseology to the Indian Law Commissioners who examined the draft Penal Code in 1847. The Law Commissioners observed: "We conceive the term 'wages war against the Government' naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous."

(238) The Hon'ble Supreme Court in **Ajmal Kasab v. State of Maharashtra (2012 (9) SCC 1)** held that the incorporation of Chapter IV of the UA (P) Act should not be viewed as a deemed repeal of section 121 of the IPC, though a terrorist act and an act of waging war against Government of India may have some overlapping features. Terrorist act may

not always be an act of waging war against Government of India and vice-versa, it is held. In **State v. Navjot Sandhu (Supra)**, the Apex Court held that the degree of animus or intent and the magnitude of the acts done or attempted to be done would assume some relevance in order to consider whether the terrorist acts give rise to a state of war.

(239) It is thus clear that section 121 IPC penalises acts having the magnitude of a war, though it is not necessary that it must be like a conventional war between two countries or that the offenders should be invaders from beyond the borders or that there should be a large number of group supporting them. In **Maganlal v. Emperor (AIR 1946 Nagpur 173)**, it is held that neither the number of the gang nor the manner in which they are armed is material, but the true criterion is '*quoamino did the gathering assemble*'. It is also held, the object of the gathering must be to attain by force and violence to strike directly against the authorities of Government of India. This being the legal requirements to attract the offence under section 121, it can now be considered whether the above said acts of the accused persons, which are proved through the evidence cited above, invites punishment under section 121 of IPC.

(240) As stated above, most of the conversations referred to by the learned Prosecutor were purely general exhortations about the wild ideas of the group members and none of the exchange (except their plan to kill Jews and a politician) matured to the level of a criminal conspiracy. For illustration, when A1 had asked if anyone knows to use AK 47 or sniper, nobody replied and the matter ended there. A1 did not also say that it was for attacking the Government. Some of those discussions started with comments about the situation in Syria or other countries where Muslims are majority and by referring to the fights or other disturbance taking place in

those countries. Some discussions have even nexus with religious preachings in Quran or other spiritual guidelines, but indeed, the members of the group ultimately deviated from it and reached their own perverse conclusions. Certain statements are either unilateral expressions or comments made in continuation of a different topic.

(241) The discussion on 05.09.2016 between A7 and A3 about Tehrika Taliban Pakistan (TTP) started when A7 said that he knows only about Afghan Taliban and TTP, in Vaseristan. Then A3 asked whether TTP keeps good relationship with Taliban. When A7 said TTP operates with ISIS for doing lone wolf's attack with India and Pakistan just like Lashkar-e-Toyyiba, A3 said 'Allahu helped TTP to move in the right direction'. It is indeed showing his traitorous attitude, but it does not amount abetting to wage war against the Government. The next instance cited by the learned Prosecutor is also of the same nature. On the same day, when one of the participants raised a doubt whether war is not *haram* (prohibited) in the holy months, one Billa asked even if a person started war during holy month, should it not be defended. Then, A7, the master of the group, opined that there is two types of Jihad, that is, offensive jihad and defensive jihad, and the offensive jihad is haram during Ramsan month, but defensive jihad is permissible. He then further queried, if a lone wolf attack is done on America on Holy months, is it offensive jihad or defensive jihad and if it is offensive, is it not *haram*. Right then A4 raised a question that, are these principles applicable to India too. A7 replied in the affirmative and followed by that, Billa commented that in India, it could be done in any midnight irrespective of the month, to which A3 replied that Muslims suffered very much in India, but still they make lengthy discussions for taking a decision in the matter of Kafirs. Billa further stated that India

declared war against Islam and they help Bangladesh to fight against Islam.

(242) Certainly, the written exchange above mentioned shows the depth of darkness in their mind and their disdainful mindset against our mother country. It causes a surge of anguish and anger in everyone who reads this, but judicial decision making rests on a different process, and the Agency is also expected to apply at least a modicum of legal sense, when they try to invoke section 121 of IPC against such instances.

(243) Indeed, A1 has asked once whether anybody is willing for suicide attack. A7 also asked two volunteers for jihad work. But nobody in the group responded to this and the discussion there abruptly terminated. It was vehemently argued by the learned Public Prosecutor that the posting made by A1 in Darul Fikr which begins with the words democracy is Kufur, and even the last democrat and secularist should be killed and that a war is to be declared against democracy and secularism, is nothing but an instigation to wage war against India. It is true that A1 made those statements in his speech as well as when he posted its text in the group. But interestingly, A1 himself stated in the group that he prepared a speech and it was only a trial. When the statement is read in its entirety along with the further discussions, it seems that the real purpose for which it was posted is not to incite the members of the group to wage war against Government of India. Its purpose was to incite the members to react against the perceived sufferings of Muslims in India and also to advocate that Islamic principles demand Islamic governance. He laments about the cruel acts of RSS, Congress and the other political parties for causing pain to Muslims in India. Even though, the speech contains an opinion that all the democrats or secularists in India should be killed and a war has to be declared against democracy and secularism, it is only a statement

expressing his opinion, and it cannot be considered as *abetment* to wage war against Government of India, as the word 'abetment' has specific meaning in IPC. This aspect entails further elaboration.

Abetment to wage war-Scope and ambit of the word 'abetment':

(244) The term 'abetment' is explained in section 107 IPC. Section 7 of IPC makes it imperative that if an expression is explained in any part of IPC, it should be used in every other parts with that meaning. A person abets the doing of a thing when he (a) instigates it, (b) engages with one or more persons in any conspiracy for doing it and some act takes place in pursuance of the conspiracy, or (c) when he intentionally aids the doing of it.

(245) **Abetment by instigation:** A person is said to have instigated another to do an act, when he actively suggests or stimulates him by any means of language. (**Commentaries on Indian Penal Code by Ratanlal and Dhirajlal**, LexisNexis, 34th Edition, Page 213). To constitute instigation, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other, by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction, to keep irritating or annoying somebody *until he reacts*'. (**Chitresh Kumar Chopra v. N.C.T. of Delhi; AIR 2010 SC 1446**).

(246) In **Sanju v. State of M.P (AIR 2002 SC 1998 (Supply))**, the Hon'ble Supreme Court held that the act of instigation within meaning of section 107 has to be done with *mens rea*. The Hon'ble High Court of Kerala in **Syriac v. S.I of Police, Kadathuruthy (2005 (3) KLT 673)** dealt with this aspect in detail and held as follows:

“As per clause 'firstly' in S.107 IPC, a person can be said to have abetted in doing of a thing if he 'instigates' any person to do that thing. But, when can a person be said to have "instigated" another to do an act? In Ramesh Kumar v. State of Chattisgarh, JT 2001 (8) SC 569, a decision cited by learned counsel appearing for petitioners, Supreme Court held, "instigation is to goad, urge forward, provoke, incite or encourage to do "an act".... So also, the physical act of 'urging forward' or 'instigation' involves doing of an act by strongly advising, persuading to make a person do something or by pushing or forcing a person in order to make him move more quickly in a forward direction. But, apart from, such physical act or omission, one more factor has to be established to constitute 'instigation'. That is a mental act. While a person instigates another by the act of 'goad' or 'urging forward' such person must also have, the intention to provoke, incite, urge or encourage doing of an act by the other.”

None of the instances pointed out by the learned Prosecutor show that any of the accused person who stand the trial actually abetted the other to wage war against Government of India by means of *instigation*, if we correctly follow the legal sense in which that word is used in IPC.

(247) It is in evidence that none of the participants positively reacted to the contents of the text, rather than appreciating A1. If it is argued that A1 has abetted the others, then also it is incorrect. He did not persuade or stimulate them to do anything he stated in the said text. In order to ascertain the real intention of A1 with which he posted that text or voice in the groups, we have enough materials on record. As it is found above, a person is said to instigate another when he strongly incites and continued to stimulate him for the doing of the act instigated. When the other person remains uninfluenced by his incitement, if he really intended to instigate the other, he would naturally continue to 'goad' and compel him. Such steps distinguishes actual instigation from a mere expression of

idea or opinion. In this case, we can certainly apply this sure test, to determine whether the words expressed by them actually amount to abetment by instigation.

(248) The text was posted by A1 with subsequent comments that it was only a 'test'. If A1 had actually intended to instigate them to kill all democrats and secularists in India, he would have further persuaded or compelled them for doing so. But, when others remained uninfluenced by those comments, A1 did not react. He even asked them not to share it with anyone, as his voice is not attractive. This clearly shows that what he intended by publishing that text or voice was only to inform others that he had such an opinion and he wanted to get the comments of others in the sense whether they appreciate it or not. There is nothing on record to show that A1 did so expecting that those who read it should go and kill all the democrats and secularists in India, that to dethrone the present administrators in India and to install a new set of rulers, who would implement Islamic administration here. It was all his evil dreams, but it could not be treated as an abetment within the meaning of section 121 of the IPC, as, there was no attempt from A1 to push or move forward anyone in the direction he proposed.

(249) It is true that in the telegram group named 'Gate', A2 raised a question that when money has become necessary for doing Jihad, is it not *Ganema* the best method to find it, and if so, how could they find it in India. He recalled the raides made by Rasoolullah on the Quareshi Caravan for finding *Ganema*. In reply, A1 said that they could find *Ganema* by attacking the *Kufur*, either individually or in a group or they could even kidnap and negotiate money. When A2 asked about other methods similar to the one in the path of Rasoolullah, PW100 said, they could adopt ATM

robbery or on-line hacking. That view was supported by A1 by saying that, in addition, they could loot from jewellery, Marwadees. He said, those methods are the practical way out to find *Ganema*. A2 also agreed with their view.

(250) It is indeed clear from the above narration that what they have discussed about is only a doubt as to how they should find *Ganema*, when they do Jihad one day. When A2 repeatedly asked what is the present day equivalent to the raid made by Rasoolullah, another opined that they could now practically loot ATM or jewelery or even abduct and negotiate from *Kufur*. This discussion undoubtedly shows that they are malevolent, but not that, they have abetted or instigated each other to commit ATM robbery or to abduct *Kufur* and negotiate money. It is also difficult to see that the said discussion actually amounts to instigation within the meaning of section 107 of IPC. It is almost in similar circumstances they discussed about making of bomb, poison etc. or the comment about Independence day, soldiers who died in war or the statement made by A8 that he feels disgust when he thinks of India, the comment about Gazwathul Hind etc. Of course, it will help us to understand the magnitude of the devilish ideas nurtured by a nefarious group, but it should not be stretched any further.

(251) **Abetment by conspiracy:** It is important to note that the second ingredient of section 107 will not be attracted by merely engaging in any conspiracy for doing an act, as the provision requires some action beyond the conspiracy. In other words, conspiring with one or more persons in doing a thing will amount to abetment only if *an acts takes place in pursuance of the conspiracy, and in order to the doing of that thing* (Clause secondly to Section 107). It was not done in this case. The third limb of section 107 (abetment by aiding) has no application in the present context.

(252) It may be argued that the meeting at Kanakamala and the rebellious speech said to have been made by A1, to which the members of the assembly responded in agreement, amounts to an action within the contemplation of clause secondly of Section 107. First of all, I am unable to believe the version of PW2 and PW103 to the extent they said that both of them heard such a speech of A1. The defence side contented that nobody would make such a formal address when they could see the incoming raiding team. There might have been tall grass and some other hindrance for them to see the party. But it is unpalatable to common sense that A1 (or other participants) who had taken all sorts of covert and obscure measures even while communicating through encrypted channels, delivered such a fairly long speech without noticing that two Innova cars had reached almost 40 meters away him, after negotiating the gradient. PW2 said that the raiding party reached on foot 5 metres near the assemblage, without attracting their attention. It is true that wind might have blown at that time and it could have distracted their attention from the sound of approaching cars. Then why it did not prevent PW2 and PW103 from hearing that speech, where A1 said to have delivered almost all the essential allegations stated in the FIR? I have no hesitation to hold that the purpose of the meeting at Kanakamala was undoubtedly to impart training for terrorist activities and to motivate them for randomly killing Jews or RSS leaders and such other illegal matters. But it is difficult to uphold that PW2 and PW103 heard that long statement from A1, without being noticed by anyone of the assemblage.

(253) Let us assume that A1 had made such a speech. Still it would not amount to abetment to commit waging war against India. What he abetted was only that, as the situation of Muslims in India is pathetic, it

was time to propagate ISIS ideology and that the only way out is *Jihad* through ISIS, for which they have to collect men and explosives; and as a response in agreement to the said statement, A2, A3, A5 and A6 said to have nodded. If it is true, he incited them to collect men and explosives for doing Jihad. By the word 'Jihad' they meant 'violent actions or war against their enemies'. The conversations in *Taswib* and *Knowledge* groups leave no doubt about the purpose for which they reached there. Their immediate purpose was to exterminate Jews in Vattakkanal and to kill Shri.M.T.Ramesh. Some of them had the objective of creating a unit of ISIS in Kerala under the name 'Ansar-Ul Khilafa'. These are the jihad activities under their immediate consideration. It is found above that the other comments regarding *Ganema*, bomb making etc were expression of their desire or the like, falling short of abetment or criminal conspiracy.

(254) **Section 121A:** It is argued by the learned Prosecutor that when A1 posted his speech, A2, A3, A4 and A8 supported it, and thus they committed the offence of conspiracy to wage war, even if it does not amount to abetment to wage war. This contention also seems to be baseless when their discussion is actually examined. A1 said that he created an audio and requested them to share their opinion. He further said that it was only a test and his sound was not appealing. He also requested them not to share that speech to anyone for the said reasons. In reply, A2 said that his sound was perfect, but he should have reduced the 'echo' or noise in the audio. A8 also said that the sound was good and strong, but there was excessive noise. A3 appreciated A1 by commenting that the speech appears to be one made in a conference, as the echo sound resembles the sound of a public address system. A4 also appreciated A1. Most interestingly, none of them said anything, not even a single word, about the contents of that

speech. Even otherwise, when it is found that the said acts are not enough to attract the offence of 'waging war against the Government', application of section 121A does not arise at all.

(255) Nevertheless, it is contented by the prosecution that in order to attract section 121A of IPC, even waging war is not required, but a conspiracy to 'overawe the government by the show of criminal force' is enough. The term 'overawe by show of criminal force' is used in section 121A with a specific meaning, though it is not been defined elsewhere. In the **Commentary of Indian Penal Code by Dr.Hari Singh Gour** (Law Publishers (India) Pvt. Ltd., 15th Edition, Page No. 393), it is observed as follows : *“The word ‘overawe’ clearly imports more than the creation of apprehension or alarm or even perhaps fear. It connotes the creation of a situation in which the members of the Central or the Provincial Government feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger.”* It is already found that there was no such conspiracy in this case, and that mere exchange of expressions without having the definite commitment for its accomplishment, is inadequate to constitute it. Hence section 121A has also no application.

(256) Terrorists are often called as merchants of death and destruction and thus their acts may tangentially touch the unity and integrity of India. But we have seen that all terrorist acts will not amount to an offence defined under section 121 of IPC. If the accused had actually brought ISIS mercenaries to our land to accomplish their conspiracy, there may have justification in invoking sections 121, 122 and 121A of IPC. Here, what they wanted was to form a gang of around 10-15 persons for supporting ISIS from Kerala. It may be within their contemplation that this

gang should get expanded all over India. They also might have desired that one day India should come under the flag of ISIS. Howsoever scornful their idea was, they can be punishable only for what they did and what they really conspired to do, and not for what they have dreamed. They conspired to form a terrorist gang to support ISIS. The gang could have eventually gained support of hundreds of vulnerable youth. It may have spread across the vast expanse of our nation. It may have acquired means and machineries to overawe the Government, and they may have ultimately waged a war against the Government of India. NIA deserves accolades for nipping them in the bud. But the proposition urged by them that these persons conspired to wage war against India or collected men to wage such war is far fetched and baseless, when it is analysed in the light of the evidence available.

(257) **Conclusion** : What they did is a conspiracy to form a gang for declaring allegiance to ISIS and to kill certain persons, and not to wage war or to collect men to wage war against Government of India. The text posted by A1 that democracy is sin and all democrats and secularists should be killed, is highly objectionable and it shows the perversity with which he had been driven, but the court cannot portray it as an offence under sections 121, 122 or 121A of IPC. They are not guilty of those offences. The points are answered accordingly.

(258) **Point No. 9 (Did they raise or provide fund for committing a terrorist act ?)** :- It is already found that A8 had transferred Rs.18,000/- to A2 on 24.09.2016 through Western Union Money Transfer. It is also proved through the evidence of PW27 and PW69 that A2 received the said amount. From the evidence of PW92 and the discussion found in Tadwib group, it is obvious that the money was for meeting the

expenses which might incur when they execute their plan to kill Jews in Kodaikkanal.

(259) Section 17 of the UA(P) Act provides that whoever raises or provides fund knowing that such funds are likely to be used by a terrorist organisation or by a terrorist gang or by an individual terrorist *to commit a terrorist act*, shall be punished under the said provision. The essential concomitant of the said provision is the *knowledge* of the offender that the fund was provided for committing a *terrorist act*. But section 17 makes it clear that whether the fund has actually used or not for the commission of such a terrorist act, has no significance. In this case also, the fund was not completely used for the said act. However, A2 wrote in *Taswib* that he had arranged a vehicle, which was one of the major purposes of raising fund. It stands proved that the fund was collected by A2 with the full knowledge that it would be used for a terrorist act. It is evident from the chats that A1 and A3 also had full knowledge about raising the fund and its purpose. They caused to raise the fund and hence they are also liable to be punished under section 17.

(260) A8 had provided fund to A2 and A4 was a member in the group *Taswib*, where discussion was made about raising money. Nevertheless, it is not possible to impose liability under this provision on A4 or A8. It is found above that A4 and A8 were not part of the conspiracy to commit a terrorist act or an act preparatory in its commission. There is also no evidence that they had knowledge that the money would be used for the commission of a terrorist act. A4 did not 'provide or collect' money. Therefore, either section 18 or section 120B will not help the prosecution to rope in both of them under section 17 of the UA(P) Act. The knowledge that the fund was likely to be used for the commission of a terrorist act is an

essential component of section 17. As found above, the prosecution did not succeed to bring in evidence to show that A8 provided money with the knowledge that it would be, or likely to be, used for a terrorist act. He might have the knowledge that it would be used for furthering the activities of the terrorist gang or even the terrorist organisation, which may amount to an offence, but it is not sufficient to attract section 17. It is important to note that unlike section 40, this section does not contain the term '*reasonable cause to suspect* that it might be used for the purpose of terrorism.' It means, the offender should have definite knowledge, in order to attract section 17 of the UA(P) Act. The point is found accordingly.

(261) **Point No. 10 (Did they recruit any person for the commission of a terrorist act ?)** :- It appears that the word 'recruit' is used in section 18A of the UA(P) Act in the ordinary meaning, as the said expression is not specifically defined anywhere. The ordinary meaning of the word in the present context is only that '*to secure the service of or engage or hire*' (Merriam Webster's Collegiate Dictionary -11th Edition). Section 18B provides punishment for recruiting or causing to be recruited any person for the commission of a terrorist act. Section 18B does not insist that the recruitment should be *to a terrorist organisation*. The provision has its foundation on the very act of securing the service of another *for the commission of terrorist act*. From the conversations made in the group Taswib, it is evident that A1 has secured the service of A2, A3 and A5, and attempted to secure the service of PW13, for committing the terrorist act of killing Jews and a political leader. He assigned various tasks in their plan to each of them. Collecting information and making a study about the target was given to A5. Hence, he recruited them, especially A5, for the said purpose, which was already found as a terrorist cat. Hence, he committed

the said offence. It is also evident that A2 and A3 also were in agreement with A1 and A5 to secure the service of A5 or for engaging the service of each other for the said purposes. A5 had clearly availed the service of PW13 at the instance of A1 for the commission of a terrorist act. A2 and A3 availed the service of each other as the driver or 'executor' for the commission of a terrorist act. Hence the acts of A1, A2, A3 and A5 amount to an offence under section 18B of the UA(P) Act. A4, A6 and A8 had not taken part in the conspiracy for the commission of a terrorist act and hence they have not committed the said offence. Point is answered accordingly.

(262) **Point No. 11 (Did they become members of a terrorist gang or terrorist organisation ?)** :- Shri. Arjun, the learned Public Prosecutor, contended that all the accused persons, by their proved acts, became enrolled to the terrorist organisation ISIS, which is undisputedly involved in terrorist acts, and thus they are liable to be punished under section 20 of the UA(P) Act. According to him, A1 and A7 have unquestionably declared in the group Bab-Al-Noor that A7 had been appointed as the 'Ameer' of the said group by ISIS, that A7 said their channel was officially approved, and that on several occasions, A7 had warned the members to be very active, as ISIS was keenly watching and reviewing their work. When A7 announced that Abu Esa, his fellow member in ISIS, had taken over the supervision of the group and he would evaluate the performance of the group members, all of them agreed to it and received the telegram ID of Abu Esa for interacting with him, it is contended. The primary aim of the terrorist gang was to form the 44th vilayath of ISIS in Kerala and they even depicted the map of India under the flag of ISIS and thereby they have certainly acted as the members of ISIS organisation, he urged. Shri. Arjun further submitted that while

considering whether a person is a member of a terrorist organisation, an analogy has to be drawn from section 10 of the UA(P) Act, where the features of membership of an unlawful association is delineated and those principles could profitably be applied in section 20 as well.

(263) These contentions are refuted by Shri.P.C.Noushad, pointing out that in order to attract section 20, the terrorist gang or the organisation in which they are allegedly members, should be actually involved in terrorist act and it is not sufficient that they become a mere member of a terrorist gang or an organisation. It is forcefully submitted that the Hon'ble Supreme Court has declared in **Indra Das Case (Supra)** in no certain words that mere members in an unlawful association or prohibited organisation is not enough. It is also submitted that by the way those words are defined under the statute, a terrorist gang could not become a terrorist organisation, as the former expression excludes the latter.

(264) To properly evaluate the contentions raised by both sides, it is necessary to set out the relevant of statutory provisions hereunder.

Section 20 : Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, *which is involved in terrorist act*, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Section 2(l) : “terrorist gang” means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

Section 2(m): “terrorist organisation” means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

(265) Before looking into the evidence suggested by the prosecution, it is beneficial to have a proper understanding of the ambit of section 20 of the UA(P) Act, in juxtaposition to other related provisions of the statute.

(266) **Distinction between Sections 10 & 20 of the UA(P) Act :** Section 10 of the UA(P) Act penalises four acts such as (i) continued membership in an unlawful association (ii) taking part in meetings of such an association (iii) contributing or receiving contribution for that association and (iv) assisting the operations of the association. Section 10 thus makes an umbrella provision for taking in three more eventualities therein, in addition to the membership in an unlawful association. Section 20 is not so comprehensive. It deals exclusively with punishment for *being a member* of a terrorist gang or terrorist organisation. The other three incidents mentioned in section 10 and some other similar things are separately dealt with in sections 38 and 39, when it relates to terrorist organisation. Even though sections 10 and 38 of the UA(P) Act have similarities, when section 10 *inter alia* punishes for being a member of an unlawful association, section 38 does not provide punishment for being a member in a terrorist organisation. It actually deals with 'offence relating to the membership'.

(267) This is because section 20 exclusively provides punishment for being a member of terrorist organisation. In fine, section 20 comprises punishment solely for *being a member* of a terrorist gang or a terrorist organisation, and it does not extend to an offence *relating to the membership* in such gang or organisation, unlike section 10. In addition, section 20 can be invoked only when the terrorist gang (or a terrorist organisation) is really *involved in terrorist act*. Thus, if the accused persons

in the present case are members of only a *terrorist gang*, section 20 will not be attracted, as the said gang has not actually involved in any terrorist act, though some of them had longed to do it. When the statute specifically prescribes actual involvement in terrorist act to qualify them to be a terrorist gang, their 'plan to commit terrorist act' is not sufficient to attract section 20. When the term used is 'is involved', it must be present involvement, and not future plans. Hence, section 20 can be applied in this case only when the prosecution proves that the said accused persons were members of a terrorist organisation, viz, ISIS.

(268) The court cannot insist the prosecution to bring evidence like roll-book or muster roll showing membership in any unlawful association or terrorist organisation. The membership in such entities is to be inferred from the attending circumstances, if the evidence admits it. Then the real question to be addressed is, whether there are circumstances to infer that the accused persons are actually members of ISIS or they were merely a terrorist gang. All the circumstances counted by the prosecution are relevant to show that the accused persons had functioned in the social media groups with full knowledge that one of the purposes of the group was to assist ISIS or to promote the ideology of ISIS in Kerala or Tamil Nadu. But in my opinion, none of the above cited evidence show that they have become members of ISIS. Let us discuss the reasons.

(269) First of all, as per the evidence before the court, formation of 'Ansar-Ul Khilafa KL' was only their aim, and it did not, and could not have, come true until they meet. One of the purposes of the meeting at Kanakamala was certainly the formation of that illegal association. But it did not happen, if we go by the evidence. There is yet another question that by the unilateral act of the accused persons in declaring their association as

vilayat of ISIS, will they become its members. Anyway, that question does not arise here, as there is no evidence that they made such a declaration in their meet.

(270) It is argued by the prosecution that whether or not their association has come into effect, their acts in allegiance to the orders of A7 make them members of ISIS. This contention is difficult to accept. A7 might be a member of ISIS in Afghanistan. It may even be contended that the evidence adduced during trial is not sufficient to hold that A7 had joined in ISIS and had been fighting in Afghanistan. No doubt, there are some indications about it, as he commented that he was in an area where drone attack of America happens etc. His brother, PW55 deposed that, A7 informed him that he was going to join ISIS. Anyway, if it is presumed that A7 was in ISIS, even then the alleged act made by the accused persons will not make them members of ISIS. This aspect can be considered in detail.

(271) Indeed, on 25.09.2016, A1 posted in his Facebook account with ID 'Jameel Tvm' that "I am a member of Doula" and "I am in Islamic State". In the absence of other evidence, this statement which may amount to confession, would have been sufficient to infer that he is a member of ISIS. But the evidence in this case speaks elequontly that it was only a claim or desire of A1. One person gets membership in an association when the association decides so, but not vice versa. Nowhere in the discussion made by A7, he treated any one of them as members of ISIS. In fact, the accused persons, including A1, were waiting for the final opinion of A7 on such matters, as A1 said, Kochappa (A7) alone can take a decision on it. (Bab-Al-Noor, 08.09.2016, 12:24:16 p.m.).

(272) There was a discussion in the group that should they give 'Bayat' to ISIS. Initially, A1 said that ISIS would permit them to give 'Bayat'

only if the group members start a vilayat in Kerala. (This clearly implies that one needs to get permission of ISIS to give bayat to it). Then, A2 asked a question that what is the relationship between starting vilayat and giving 'bayat'. According to him, both are different matters. Later, A1 conceded to it and they decided to give 'Bayat' during their meet at Kanakamala. The dictionary meaning of 'Bayat' is that *an oath or allegiance to an 'Amir'*. PW21 also stated that once 'Bayat' is given, the leader of the group will declare that he would stand along with them. Therefore, the members of the group never considered themselves as members of ISIS, though it might be their cherished desire. Indeed, there is every possibility that most of them might have accepted the membership of ISIS with pleasure and proud, if they have got an opportunity. But, let us punish them for what they did, and not for what they longed to do.

(273) When PW100, an approver and a prominent person among the members of those social media group, was examined, a court question was put to him that who are the ISIS leaders he directly or indirectly contacted so far. Then he said it is A7 and no one else. He further said that as part of the social media activity or otherwise, he did not contact any person other than Keralites, who have any connection with ISIS.

(274) Membership in an organisation is not a unilateral aspect. Even when the court cannot demand evidence of a formal enrolment in the matter of membership in a proscribed organisation, there should be a reasonable satisfaction that the offenders were treated as members by that organisation. Their participation in meetings organised by the association, their involvement in the key operations of the association and the role played by them in its general activities are some of the characteristics to show membership. All these are absent in this case.

(275) True, the accused persons have promoted the ideology of ISIS and they planned to do terrorist acts as part of their declaration of allegiance to that organisation. But the evidence on record does not show that the organisation ISIS has treated them as members of it. A7 has made hundreds of comments in the social media groups and in personal chats with these accused persons. Nowhere he said or indicated that they have directly connected to ISIS. It is correct that, the target to kill Jews in Vattakkanal was given to them by A7, who is seemingly a close associate of ISIS. Once he said, they would be thereafter lead by another person, presumably having nexus with ISIS. Such missions can be entrusted to anyone, even to hired killers. His act at the best shows that ISIS was interested in the affairs of these accused, but nothing more.

(276) Further, most of the accused persons had discussed about their plan to do *hijrah*. The prosecution themselves considered the meaning of the word 'hijrah' as migrating to ISIS and to the territories under their control. If the accused persons have already got membership in the proscribed organisation, this would not have been the situation. At any rate, the matters before the court do not show that they have become the members of ISIS. They are indeed qualified to be called as members of a terrorist gang, but membership in such a nefarious gang is not sufficient to attract section 20, unless the gang has actually involved in terrorist act, which has not happened in their case.

(277) It cannot be forgotten that all their acts were in the social media, except few movements (like sending money from abroad, meeting PW13 at Mavoor and the final meeting at Kanakamala), and they never did, or attempted to do, anything in the real world. It is thus difficult to hold that by the mere comments made by them in the perceived privacy among

the group members, they had become members of ISIS, unless it is shown that they had actually got involved in any of the dreadful activities of those organisations. This observation is made not in forgetfulness of one reality that modern time criminal organisations are using social media as tool for furthering their activity. But the issue under consideration is different.

(278) It is also to be remembered that the structure of every social organisation (whether it is legal or otherwise) is generally that, there would be decision-makers at the apex level and usual members in the next level, followed by the mere supporters of such organisations, who may sometimes advocate and even act for the organisation. There may be mere sympathisers or apologists whose role is even lesser than an active supporter. In a criminal trial, it is not possible to hold that everyone who supported an organisation, either by cooperating with some of the missions of the organisation or by otherwise propagating for it, is a member of that organisation. There must be a distinction between a supporter and actual member of an organisation, as section 20 spells out the offence of '*being a member of terrorist organisation*'. Something falling short of membership may amount to an offence under section 38 and 39 of the Act, but not section 20. When this is the clear and plain legislative scheme, it is impermissible to invoke section 20 of the UA(P) Act. The point is answered against the prosecution.

(279) **Points No. 12 (Did the accused persons associate themselves or support a terrorist organisation ?)** :- From the elaborate discussion made above as to the evidence produced in this case, it is proved that A1, A2, A3 and A5 professed to be associated with ISIS, an organisation included in the first schedule of the UA(P) Act as entry No. 38 and they did so with the intent to further the activities of ISIS in Kerala. It is also proved

that A4, as a member of all core groups acted in accordance with the directions of A7, who was openly acting as the close associate of ISIS. A4 forwarded the work of Ibn Nuhaas, a book suggested by A7 for promoting the views of ISIS, to A6, immediately after A6 was contacted by A1 (Exhibit P121(j) (1), recovered from MO1). It can thus be easily inferred that A4 did the task for the purpose of propagating ISIS ideology. A4 and A8 also motivated the other members of the group by sharing messages and comments supporting ISIS. A7 and A1 had declared that ISIS appointed A7 as the 'Amir' of those groups and even thereafter A4 and A8 continued to contribute their ideas in those groups. It was also declared in those groups that one of the major purposes of the team under the leadership of A7 and A1 was to start a vilayat of ISIS in Kerala. Subsequent to that revelation also, both of them continued to co-operate with them and helped them. As pointed out above, A4 openly declared that 'proud to be a terrorist'.

(280) In Bab-Al-Noor group, on 30.08.2016, A7 warned all of them for their lethargy by stating that the group is not meant for 'chit-chat' and they have a mission to help state (ISIS), either by media work or by jihad work. A4 seemingly put a 'thumbs up' emoji and then A7 bashed him by saying that 'No thumbs up please, I want to do people work'. In reply, A4 said that he was working in accordance with his abilities, though he might require improvement. This statement of A4 has to be read along with Exhibit P150 series, the personal telegram chats with PW100, which was retrieved from MO21 tablet of A4. The chat discussion between them on 23.08.2016 would reveal that A4 was engaged in the translation work given by A7. Many of them are in respect of religious matters, but it appears from certain texts that it involves extremists views like 'Al Wala Wal Bara' (Hate and love for the sake of Allah) and some other things criticizing democracy

and the judicial system in India. It is further evident from the group chats that the members of those groups mutually invite support to the terrorist organisation. All these facts clearly shows that his acts come within the purview sections 38 and 39 of the UA(P) Act.

(281) A8 had sent Rs.18,000/- to A2 as demanded by A7. It was also proved from the discussion that he had every reason to believe that the said amount would be used by A2 for furthering the activities of terrorist organisation. Apart from this, A1 to A5 and A8, being members of those groups, motivated each other to wok for promoting the ideas of ISIS. It stands proved beyond any doubt by the conversations available in the telegram groups in which all the above accused persons are members, that they invited support of each other for ISIS, with the intention to further its activities in Kerala. From all these facts, it is proved that A1 to A5 and A8 professed to be associated with ISIS with an intent to further its activities, and they invited support for the said organisation by making comments and opinions in social media, and also by motivating others, which are offences punishable under sections 38 and 39 of the UA(P) Act.

(282) **Distinction between sections 38 and 39 of the UA(P) Act :** However, the learned counsel appearing for A4 attempted to canvass a proposition that sections 38 and 39 are not providing distinct offences, as one provision is overlapped by the other and hence, even after the pronouncement of law in this regard by the Hon'ble Supreme Court in **Yasmin's case (Supra)**, both provisions should not be applied simultaneously. The said submission is incorrect in the light of the very explanation made by the Hon'ble Supreme Court in the said decision, albeit the accused in that case was not convicted under section 39 of the UA(P) Act. The law declared by the Supreme Court is very clear that section 38 as

well as section 39 would be operative independently in appropriate cases.

(283) That apart, the distinction between section 39 and 38 of the UA(P) Act is literally visible. Section 39 is attracted only when a person with the intention to further the activity of a terrorist organisation *invites* support for that organisation. But section 38 will be attracted if a person, either associates with a terrorist organisation or professed to be associated with it, with the intention to *further its activity*. For invoking section 38, the offender need not invite support for the terrorist organisation. He needs to associate himself with it, with that particular intent. To attract section 39, it is not necessary that he should either associate himself or profess to be associated with the terrorist organisation. In other words, with or without associating himself with that organisation, if he invites support for it, the offence under section 39 is completed. The ingredients of section 38 and 39 being the above components, I find no force in the contention raised by Shri.Ralph that, the said offences are applicable only to the persons who convened the meeting, and not the participants.

(284) In this case, all the necessary elements to attract both those offences are present as against A1 to A5 and A8. But the prosecution did not succeed to prove that A6 did any such acts. Mere proof that he joined the meeting at Kanakamala is not sufficient to hold that he professed to be associated with a terrorist organisation, with intention to further its activity or that he invited support for that organisation. The point is found as above.

(285) **Points No. 13 (Did the accused persons raise fund for a terrorist organisation ?)** :- Analysis of evidence made above makes it unquestionably clear that all the accused persons, except A4, A5 and A6, contributed their part in raising fund for meeting the expenses required to

execute their plan at Vattakkanal. It is already found that A8 had reason to believe that the said amount would be used for some purposes relating to the activities of the new unit of ISIS which they intended to establish in Kerala. In order to attract the offence of section 40 of the UA(P) Act, what is required is only that one should invite another person to provide money, intending to use the same for the purpose of terrorism or that he should provide money, having reasonable cause to suspect that it would be used for the purpose of terrorism. In the case of A2, the first part of section 40 is clearly attracted. As far as A8 is concerned, the second part is certainly attracted. For A1 and A3, it is in evidence that they were in agreement with A2 and A7 in raising the fund from A8, which is punishable under section 40 of the UA(P) Act, when it is read with section 120B of IPC. As there is no evidence to show that A4, A5 or A6 had similar intention or knowledge, or that they invited A8 to provide money, they are not liable to be punished under the said provision.

(286) **Application of section 120B of IPC to other statutes:** It is contended by Shri.V.T.Reghunath, the learned counsel appearing for A4 that, when the Special Act provides a separate provision for conspiracy, section 120B IPC, being a general provision, should not be applied for offences under the Special Act. It is correct that section 18 of the UA(P) Act, inter alia, provides punishment for conspiracy to commit certain offences. But it is significant to note that section 18 does not exclusively deal with conspiracy, unlike section 120A of IPC. Section 18 provides punishment for conspiracy, attempt, incitement, abetment and such other matters relating to the commission of a terrorist act or any act preparatory to the commission of such act. Thus, if the conspiracy does not extent to the commission of a terrorist act or an act preparatory to it, section 18 has no

application and where, it cannot be said that it excludes the general provision. Besides, section 18 no way excludes the general application of IPC. In penal statutes, it is very common that two provisions having overlapping operations hold the respective field, without affecting each other.

(287) In the absence of any specific provision limiting the application of section 120A or 120B of IPC in the matters covered by the UA(P) Act, section 18 should not be interpreted to mean that it impliedly excludes the general provision contained in IPC. Significantly, section 40 of IPC defines the word 'offence' to denote a thing punishable under any special or local law, when the word 'offence' comes within chapter IV, VA and in certain other specifically provided provisions thereunder. Chapter VA deals with criminal conspiracy and hence, the interdisciplinary application of section 120B is expressly saved by section 40 of IPC, which has the effect of extending its application to the provisions under the UA(P) Act as well. The point is answered accordingly.

(288) **Points No. 14 (Offences committed by the accused persons)** :- Before parting with the case, I must place on record that Shri.Arjun Ambalapatta, the learned Public Prosecutor of NIA, has taken exemplary efforts to help the court in this case. The endurance he has shown to bring every piece of evidence to the attention of the court reflects his commitment. He was also ably assisted by his team members, who always helped the court to search and find out the relevant materials from the digital labyrinth. Shri.A.P.Shoukkath Ali, the investigating officer, also deserves special encomium. Perusal of the CD reveals that he had taken relentless efforts to bring every minute details before the court. I should also place on record my gratitude to the learned defence counsel who all

showed enormous industry to assist the court. They displayed exceptional brilliance to probe into each and every legal and factual aspects. Even when the trial of this case lasted for 14 months, all of them co-operated very well with its schedule.

(289) The discussion made above clearly establishes that the prosecution has proved beyond any doubt the criminal conspiracy to commit a terrorist act and allied matters by the respective accused persons. It is already recorded at the end of discussion of the relevant points that whether the accused persons are guilty of the offences dealt with there. Having found thus, it can be concluded that :

a) The 1st accused is found guilty and convicted under sections 17, 18, 18B, 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty and is acquitted for the offences under section 20 of the UA(P) Act and sections 121 and 122 of IPC.

b) The 2nd accused is found guilty and convicted under sections 17, 18, 18B, 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty and is acquitted for the offences under section 20 of the UA(P) Act and sections 121 and 122 of IPC.

c) The 3rd accused is found guilty and convicted under sections 17, 18, 18B, 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty and is acquitted for the offences under section 20 of the UA(P) Act and sections 121 and 122 of IPC.

d) The 4th accused is found guilty and convicted under sections 38 and 39 of the UA(P) Act and section 120B of IPC. He is found not guilty and is acquitted for the offences under sections 17, 18, 18B, 20 and 40 of the UA(P) Act and sections 121 and 122 of IPC.

e) The 5th accused is found guilty and convicted under sections 18, 18B, 38 and 39 of the UA(P) Act and section 120B of IPC. He is found not guilty and is acquitted for the offences under sections 17, 20 and 40 of the UA(P) Act and sections 121 and 122 of IPC.

f) The 6th accused is found not guilty and is acquitted on all heads of charge for the offences under sections 18,18B, 20, 38 and 39 of the UA(P) Act and sections 120B and 122 of IPC. He is set at liberty forthwith and his bail bonds stand cancelled.

g) The 8th accused is found guilty and convicted under sections 38, 39 and 40 of the UA(P) Act and section 120B of IPC. He is found not guilty and is acquitted for the offences under sections 17, 18, 18B, and 20 of the UA(P) Act and section 122 of IPC.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court, this the 25th day of November, 2019.

Sd/-

P. Krishna Kumar
Judge

(290) **Point No. 15 (Sentence)** :- Heard the convicts, the learned Public Prosecutor and the learned counsel appearing for the convicts on question of sentence. The convicts submitted that they were in the prime of their youth when the incident took place and that while they were in jail for the last 3 years, they obeyed all the jail rules and never created any issues. They all pleaded for mercy. A1 submitted that his parents are very aged and there is nobody to look after them or his younger school going brother. He said

his financial condition is extremely weak. A2 also submitted that his parents are aged and infirm and he is the sole earning member. A3 submitted that the incident occurred when he was aged 24, that the social media badly influenced his conduct, that whatever things he did were owing to his immaturity of age, and that whatever statements he made were made in a lighthearted manner, without having any ill will. A4 stated that he got involved in this case at the age of 24 years and at the time when he was arrested, he already decided to withdraw from all social media activities. According to him, he completed M.A. Sociology while in jail and awaits positive result next month. It is stated by A5 that his father died several years back and since then, he is the sole earning member of the family. He submitted that his son is undergoing treatment for depression owing to this case and that his aged mother has become sick. A8 pleaded that he was arrested at the age of 25 years and everything happened due to his immaturity and unhealthy relationships in the social media.

(291) Shri.Arjun Ambalapatta, the learned Public Prosecutor for NIA, submitted a written argument note and contended that the well accepted parameters of awarding sentence are (a) role of the convict in the crime, (b) his contribution in the commission of the crime and (c) the after effects of releasing him to the society. He further pointed out that the convicts had formed a terrorist gang through the telegram application, while they were working in different parts of the globe, that one of them died while waging war for ISIS in Afghanistan and thus, this case has transnational ramifications. The safety and security of the society demands that all of them should be kept behind the bars for the maximum term prescribed by the statute and it must be a lesson to the similarly placed criminals, he urged. According to him, the sentence must reflect an

assurance to the society that our legal system takes such things very seriously. Placing reliance on various reported decisions, the learned Public Prosecutor further contended that the courts owe a duty to the nation in the combat of terrorism and it should not show undue sympathy to the convicts. He also pointed out that the court should rise up to the expectations of the common man, who understands the rule of deterrence better than reformation, and thus the general rule of concurrent sentence should not be followed in terrorism cases. Relying on the decision in **Yasmin's case** (supra), the learned Public Prosecutor forcefully submitted that the Hon'ble Supreme Court has restored the sentence of 7 years for an offence under section 38 of the U.A. (P) Act, whereas the High Court had reduced it to 3 years.

(292) The learned counsel appearing for the convicts submitted that even when a terrorist act has actually been committed by using bomb or other lethal weapons and death is not resulted in, the punishment provided in law is life imprisonment or imprisonment for a period not less than 5 years, and that being the legislative policy, in a case where only a criminal conspiracy had taken place, the ideal punishment is the minimum prescribed. It is further contended by them that in **Yasmin's case**, though the Hon'ble Supreme Court has found her guilty only under section 38 of the UA(P) Act, the court has taken note of a proved fact that the convict and her confederates were members of ISIS, whereas in this case, the court has found otherwise. The learned counsel pointed out several mitigating circumstances appearing in favour of each of the convicts.

(293) It is true that the conduct of the convicts in the court during the entire period of the trial was very good and that they do not have any criminal antecedents, other than A5, who is further reportedly

charge sheeted in a magisterial offence. But, this is a case in which it is found that all the convicts had orchestratedated a plan to support ISIS, a terrorist outfit. It is almost an inviolable rule that in such cases, while awarding sentence, a sympathetic approach is out of place. The sentence has to be imposed by giving more emphasis on the aspect of social security, rather than individual liberty. The legal principles emanating from the decisions cited by the learned Prosecutor clearly guide the court in fixing the sentence in consonance with the legislative mandate. In **Ravi v. State of Maharashtra (MANU/SC/1368/2019)**, the Hon'ble Supreme Court has held that the object and purpose of the sentence has to be 'society centric', without being influenced by the personal views of the Judge, as the society is the biggest stake holder in the administration of criminal justice system. The court further held that the civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of criminals, and that the society legitimately expects the court to apply the doctrine of proportionality by imposing suitable and deterrent punishment which commensurates with the gravity of the offence.

(294) Even while following those guidelines, this court has also to be mindful that the culpable role of each convicts in this case varies and hence, they should be treated separately. The convict Shri.Manseed (A1), who masterminded most of the criminal acts in this case deserves a stringent punishment than all others. When the chat conversations in the telegram group were examined, it was found that he had motivated, enticed and incited all others into his plan, apart from devising a detailed plan to execute their task. Next to him, the role played by Shri.Swalih Mohammed (A2) appears to be very crucial. He was ready to receive gun and poison, apparently from the ISIS mercenaries, for the attack they planned at

Vattakkanal. It was in his mind to make bomb and he even persuaded A7 to supply materials for it.

(295) Shri.Rashid Ali (A3) and Shri.Safvan (A5) were acting as the tools in the hands of either A1 or A2 and thus they deserve a lesser sentence. Though A5 was not part of the conspiracy to kill Jews, it appears from his conduct, as revealed through his statements in the groups, that he deserves a stringent sentence than A3. Shri.Ramsahd (A4) and Shri.Moinudeen (A8) stand in an entirely different strata of the crime and they should not be treated alike the other convicts. It is true that they had also contributed some ideas at the initial stage, but when A1 and A7 had designed a ruthless plan to kill innocent peoples, A4 found to have resiled back and A8 seemed to have no knowledge about it.

(296) It appears from various circumstances considered in this case that all the convicts hail from financially backward families and hence the sentence of fine should not be harsh. Though it is contended that they deserve consecutive sentence, each of the offences had arisen in one series of acts so connected together as to form the same transaction, and hence it is not required.

(297) It is disheartening that some of the convicts arrogate themselves to the merchants of death for flourishing their perverted ideas in this land of literature and secularism. It is often said that sunlight is the best disinfectant. Let us hope that sunlight will also instill sanity to these young men, who mistook the sacred religious sanctions for a call for crime. Let us also hope, one day they will realize that mankind evolved thousands of centuries ago, whereas our religions, in the last few millennia.

In the result,

- 1) The 1st accused/convict is sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 17, rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18B, rigorous imprisonment for 7 years under section 38, rigorous imprisonment for 7 years under section 39 and rigorous imprisonment for 7 years under section 40, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.
- 2) The 2nd accused/convict is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 17, rigorous imprisonment for 7 years and to pay a fine of Rs.5000/- with default prison term for one month under section 18B, to undergo rigorous imprisonment for 5 years under section 38, rigorous imprisonment for 5 years under section 39 and rigorous imprisonment for 5 years under section 40, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.

- 3) The 3rd accused/convict is sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 17, rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18B, rigorous imprisonment for 4 years under section 38, rigorous imprisonment for 4 years under section 39 and rigorous imprisonment for 4 years under section 40, of the UA(P) Act. In view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.
- 4) The 4th accused/convict is sentenced to undergo rigorous imprisonment for 3 years under section 38, and rigorous imprisonment for 3 years under section 39, of the UA(P) Act. He is further sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.25,000/- with default prison term for one month under section 120B of IPC, read with section 38 of the UA(P) Act.
- 5) The 5th accused/convict is sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18, rigorous imprisonment for 6 years and to pay a fine of Rs.5,000/- with default prison term for one month under section 18B, rigorous imprisonment for 4 years under section 38, rigorous imprisonment for 4 years under section 39, of the UA(P) Act. In

view of section 71 of the IPC, no separate sentence is to be imposed on him under section 120B of IPC.

- 6) The 8th accused/convict is sentenced to undergo rigorous imprisonment for 3 years under section 38, rigorous imprisonment for 3 years under section 39, and rigorous imprisonment for 3 years and to pay a fine of Rs.50,000/- with default prison term for three months under section 40, of the UA(P) Act. He is further sentenced to undergo rigorous imprisonment for 3 years under section 120B of IPC, read with section 38 of the UA(P) Act.
- 7) The substantive sentences imposed on all the convicts shall run concurrently.
- 8) All the convicts are entitled to get set off under section 428 of the Cr.PC for the entire period during which they were detained in this case.
- 9) MO34, MO47, MO48, MO54 with key, MO55, MO71 series, MO114 series, MO115 series, MO116 series, MO121 and MO122 series will be returned to the persons from whom those objects were seized or to the owner of the object on filing proper application within a period of 6 months from today, as those objects do not contain any incriminating materials. If there is no such application, they shall be disposed of as per rules.
- 10) MO97 series currency notes seized from PW25 will be forfeited to the Government as it was intended to be used for committing a terrorist act.

- 11) All other MOs will be retained with the records of this case, as the investigation against some of the accused persons is pending. The prosecution shall obtain certified copies of the documents in this case within the prescribed time, for future need, if any.
- 12) The directions made for the disposal of the MOs will come into effect only after the expiry of the appeal period.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court, this the 27th day of November, 2019.

Sd/-

P. Krishna Kumar
Judge

APPENDIX

Exhibits marked on the side of prosecution.

P1	01-10-2016	Complaint filed by CW1
P2	02-10-2016	Arrest memo of Jasim (A6)
P3	02-10-2016	Personal search memo of Jasim
P4	02-10-2016	Arrest Memo of Rashid Ali (A3)
P5	02-10-2016	Personal search memo of Rashid Ali
P6	02-10-2016	Arrest memo of Manseed (A1)
P7	02-10-2016	Personal search Memo of Manseed
P8	02-10-2016	Arrest Memo of Swalih Mohammed (A2)
P9	02-10-2016	Personal search memo of Swalih Mohammed
P10	02-10-2016	Arrest Memo of Safvan (A5)
P11	02-10-2016	Personal search Memo of Safvan

P12	02-10-2016	Seizure Mahazar for the MOs from the scene of crime.
P13	02-10-2016	Observation Mahazar prepared by DYSP Vikraman (PW84)
P13(a)		Portion of confession statement of accused in Ext.P13 observation mahazar.
P13(b)		The Pass word mentioned by accused in Ext.P13
P14	06-10-2016	Portion of 161 statement of Meharunnisa (PW3)
P14(a)	06-10-2016	Portion of 161 statement of Meharunnisa (PW3)
P14(b)	06-10-2016	Portion of 161 statement of Meharunnisa (PW3)
P14(c)	06-10-2016	Portion of 161 statement of Meharunnisa (PW3)
P15	06-10-2016	Seizure Mahazar for the seizure of Mobile phone (HUAWEI) of Meharunnisa.
P16	31-12-2016	Site Plan
P17	31-12-2016	Possession Certificate issued by Village Officer Peringalam.
P18	07-02-2017	Portion of 161 statement of Mehamood (PW9)
P18(a)	07-02-2017	Portion of 161 statement of Mehamood (PW9)
P19	02-10-2016	Search list for searching the house of A1 Manseed
P20		Passport of Manseed (A1) Passport No. N2785235
P21		Boarding pass of Jet airways dated 29-09 of Manseed (A1)
P22		Cheque book of State Bank of Travancore of A1 Manseed A/c No 67111379483
P23	02-10-2016	Search list for the search in the house of Ramshad (A4)
P24		Diary for the year 2015 (Bajaj Electricals)
P25	02-10-2016	Arrest Memo of Ramshad
P26	02-10-2016	Inspection Memo of Ramshad
P27	29-11-2016	Ownership certificate issued by charge officer Panoor, Municipality of Manseed (A1)
P28	25-03-2017	Portion of 164 statement of Mohammed Fayas (PW13) (conversation with Aboo Hasna and Ameer Ali in page no 4 and 5
P28(a)	25-03-2017	Portion of 164 statement of Mohammed Fayas (PW13) (conversation with Omar Al Hindi (ISIS discussions) in page No. 5,6and 7.

- P28(b) 25-03-2017 Portion of 164 statement of Mohammed Fayas (PW13) (Telegram chat with Hud Hud and Omar Al Hindi (To assassinate BJP leader) in page No 7, 8, 9 and 10.
- P28(c) 25-03-2017 Portion of 164 statement of Mohammed Fayas (PW13) (Telegram chat with Fayas and Rayan in page No10, 11, 12, 13 and 14.
- P29 Telegram conversation between Fayas (Hope) and Rayan (8GB).(Document in Hard disc with Path CDAC Report 2016-11/Evd04/ Mobile phone/LYF Mobile-IS-5016/Q1/Chats/ Telegram/Chat-36 txt) - (P121 Hard disc)
- P30 28-10-2016 Seizure Mahazar for the seizure of MO26 and MO27 series (Envelope and S.D. Cards)
- P31 12-01-2017 Seizure Mahazar for the seizure of broken Zim card (MO28)
- P32 series Bank Account statement of SB Account No.67111379483and copy of KYC form of Manseed with covering letter.
- P32(a) 04-08-2016 Entry in Exhibit P32 statement.
- P32(b) Original of (KYC) Account opening form of A1 Manseed
- P33 11-10-2016 Extraction proceedings of of E-mail and Face book account of Manseed.
- P33(a) 17-10-2016 Portion of Confession statement of A1 in Ext.P33 Extraction proceedings.
- P33(a1) 17-10-2016 Portion of Confession statement of A1 in Ext.P33 Extraction proceedings.
- P33(a2) 17-10-2016 Face book ID disclosed by A1 in the Ext. P33 Extraction proceedings. "Omarlhind@yantex.com with baquiya2020"
- P33(a3) 17-10-2016 Face book ID disclosed by A1 in the Ext. P33 Extraction proceedings." Omarlhindi@yantex.com with baquiya2020".
- P33(a4) 17-10-2016 Face book ID `` ajishmanila@tutanota.com and password " nafeesa33" of A1 in Ext.P33 Extraction proceedings.
- P33(a5) 17-10-2016 Face book ID `` ahmadjala33@tutanota.com and password "nafeesa 33" of A1 in Ext..P33 Extraction proceedings

P34		DVD Containing G-mail and face book extractions of accused Manseed.
P35	09-10-2016	Word press extraction proceedings of face book and blog details of Swalih Mohammed (54 sheets).
P35(a)	09-10-2016	Relevant portion of Extraction Proceedings (P35) facebook contents.
P35(b)	09-10-2016	Relevant portion of Extraction Proceedings (P35) facebook contents.
P35(c)	09-10-2016	Relevant portion of Extraction Proceedings (P35) facebook contents.
P36		C.D. contain face book accounts and blog extraction of Swalih Mohammed.
P37	05-10-2016	Word press extraction proceedings of the accused Swalih Mohammed.
P37(a)	05-10-2016	Face book extraction proceedings of Swalih Mohammed.
P37(b)	05-10-2016	E-mail extraction proceeding of the accused Swalih Mohammed.
P37(b1)	05-10-2016	Relevant portion (phone No. of accused mentioned) in the E mail ID of Accused No2.
P37(b2)	05-10-2016	Relevant portion in P 37 (confession of Accused.)
P38		CD contains word press accounts extraction proceedings of Swalih Mohammed.
P38(a)		CD contains face book account extractions of Swalih Mohammed.
38(b)		CD contains E-mail accounts extraction of Swalih Mhammed.
P39	03-03-2017	Death certificate of Nabeesa issued by secretary, Chazhoor Grama Panchayath, Trissur.
P40	24-03-2017	Relevant portion of 164 statement of PW21- Dr.Ameen Rashid (Page No.4 last portion to page No.9 first portion)
P40(a)	24-03-2017	Relevant portion of 164 statement of PW21- Dr. Ameen Rashid (Page No.9 to page No.11 first five line)
P40(b)	24-03-2017	Relevant portion of 164 statement of PW21- Dr. Ameen Rashid (Page No.11 to page No.16)

- P40(c) 24-03-2017 Relevant portion of 164 statement of PW21- Dr. Ameen Rashid (Page No.16 to page No 18 (Page No.16)
- P40(d) 24-03-2017 Relevant portion of 164 statement of PW21- Dr. Ameen Rashid (Page No.18 to page No.20)
- P40(e) 24-03-2017 Relevant portion of 164 statement of PW21- Dr. Ameen Rashid (Page No21 to page No 24)
- P40(f) 24-03-2017 Relevant portion of 164 statement of PW21- Dr. Ameen Rashid (Page No.24 .to page No 25)
- P41 Electronic document (soft copy) of Mujahideen poisons Hand book with path Evd 03/Memory card 4GB/Q1/Documents deleted OW files/1-562884772997628818-pdf (regarding preparation of poison from cigarette) in the Hard disk P121.
- P42 Electronic document (soft copy) of photo of two persons with path Evd10/Mobile phone/Q1/file/Image/1469666638162.jpg (regarding the photograph taken at Kodaikkanal)
- P43 02-10-2016 Search proceedings dated 02-10-2016 at 17.00 hrs. for the search conducted in the rental house of A2 at MGR Nagar,Kottivakkam,Chennai.
- P44 02-10-2016 Search proceedings for the search conducted at he work place of A2 (Mahedra Holidays and Resorts India Ltd, Chennai -2)
- P45 04-01-2017 Relevant portion of 161 statement of PW24 Ramla Begum.
- P46 07-10-2016 Relevant portion of 161 statement of PW25 Jinsina
- P46(a) 07-10-2016 Relevant portion of 161 statement of PW25 Jinsina
- P46(b) 07-10-2016 Relevant portion of 161 statement of PW25 Jinsina
- P46(c) 07-10-2016 Relevant portion of 161 statement of PW25 Jinsina
- P47 07-10-2016 Seizure Mahazar for the seizure of 19 Nos 500 notes from Jinsina wife of A2.
- P48 07-10-2016 Email and Social Media accounts extraction proceedings of Ramshad (A4).
- P49 CD of face book and G mail account extraction of Ramshad

P50	01-12-2016	Seizure Mahazar for the seizure of documents from BPM Forex Pvt. Ltd, Chennai.
P51	10-2-2017	Ownership certificate issued by Secretary, Kuttiady Grama Panchayath.
P51(a)	10-02-2017	Residential Certificate issued by Secretary, Kuttiady Grama Panchayath.
P52	13-10-2016	Relevant Portion of 161 statement of PW31 Navas
P52(a)	13-10-2016	Relevant Portion of 161 statement of PW31 Navas
P52(b)	13-10-2016	Relevant Portion of 161 statement of PW31 Navas
P53	27-02-2017	Letter regarding treatment details of Farhad B/o Ramla issued from Amana Hospital Kuttiady.
P54	02-10-2016	Search list for the searching the house of A3 at Ukkadam, Coimbatore.
P55	03-10-2016	Seizure Mahazar for the seizure of Lap Top of A3 Rashid Ali
P56	05-10-2016	Seizure Mahazar for the Seizure of Lap top from Abu Tahir.
P57	07-10-2016	Seizure Mahazar for the seizure of Pen drive from father of A3
P58	15-03-2017	Seizure Mahazar for the seizure of of poster (MO49)
P59	22-03-2017	Seizure Mahazar for the seizure of the items from the office of the Kochi Corporation.
P60	22-06-2017	Mahazar for CD containing screen shorts and voice messages extracted from the mobile phone of Shebinas
P61	12-01-2017	Relevant portion of 161 statement of PW36 Abu Tahir
P62	13-10-2016	Relevant portion of 161 statement of PW37 Nivas Khan.
P62(a)	13-10-2016	Relevant portion of 161 statement of PW37 Nivas Khan.
P63	13-10-2016	Relevant portion of 161 statement of PW38 Sheik Safiyullah.
P64	13-02-2017	Ownership Certificate issued by Asst. Commissioner, Central Zone, Coimbatore Corporation.
P65	6-10-2016	Disclosure proceedings of Rashid Ali (2 sheets)
P66	6-10-2016	Extraction proceedings of contents of Social Media/ E-mail accounts of Rshid Ali @ Abu Basheer @ Bucha @ Dalapathi @ Ansar.
P67	12-10-2016	Relevant portion of 161 statement of PW41 Ramla

P68 series	07-01-2011	Attested copy of Customer Application Form of prepaid mobile connection No.9745869424 in the name of PW41 Ramla with copy of ID proof.
P69	28-02-2017	Seizure Mahazar For the Seizure of Samsung Mobile phone and SIM Card from Shahina
P70	28-02-2017	Relevant portion of 161 statement of PW42 Shahina
P71		Photograph of Shajeer Mangalassery in the Pass book A/c No.67049458504 of State Bank of Travancore, Kozhikkode Main Branch and Sale deeds.
P71(a)	30-11-2007	Photograph of Shajeer Mangalassery in the true Photostat copy of sale deed No. 5530/07 of SRO Chevayoor in the name of Shajeer.M.
P71(b)	31-05-2012	Photograph of Shajeer Mangalassery in the original Sale deed No 2336/2012 of SRO Chevayoor in the name of Shajeer M.
P72		Voice clips of Shajeer Mangalassery retrieved from the Tab of A4 with Path CSG No.2016-11NIA/ DSK01 /Evd12/Tablet/Q1/ Files /Audio/ 5_773563922572640354 in Ext.121 Hard disk.
P72(a)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640359.
P72(b)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640360
P72(c)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files /Audio/5_773563922572640361
P72(d)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640362
P72(e)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640363
P72(f)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640364
P72(g)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640365
P72(h)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640366
P72(i)		CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/ Files/Audio/5_773563922572640367

- P72(j) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640368
- P72(k) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640369
- P72(l) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640370
- P72(m) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640371
- P72(n) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640373
- P72(o) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640374
- P72(p) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640376
- P72(q) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640377
- P72(r) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640379
- P72(s) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640380
- P72(t) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640381
- P72(u) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640382
- P72(v) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640383
- P72(w) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640384
- P72(x) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640385
- P72(y) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640386
- P72(z) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640387
- P72(aa) CSG No.2016-11NIA/DSK01/Evd12/Tablet/Q1/Files/Audio/5_773563922572640393

- P73 Voice clips of Shajeer Mangalassery retrieved from the mobile phone of A3 with Path CSG No.2016-11NIA/DSK01/Evd03/ mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640302 in the Hard disk P121.
- P73(a) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640308
- P73(b) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640310
- P73(c) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640448
- P73(d) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640449
- P73(e) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640450
- P73(f) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640451
- P73(g) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640452
- P73(h) CSG No.2016-11NIA/DSK01/Evd03/Mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640453
- P73(i) CSG No.2016-11NIA/DSK01/Evd03/Mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640454
- P73(j) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640460
- P73(k) CSG No.2016-11NIA/DSK01/Evd03/mobile phone/Samsung_SM-G7102/Q1/Files/Audio/ 5_773563922572640461

P74		Voice clips in the pendrive (Ext..143) with path No.CSG No.2017-08NIA/Pendrive/mobile phone/ mobile phone/Q1/ All Data/files/Audio/5_773563922572640306
P74(a)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640316
P74(b)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640317
P74(c)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640318
P74(d)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640319
P74(e)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640320
P74(f)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640321
P74(g)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640322
P74(h)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640324
P74(i)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640327
P74(j)		CSG No.2017-08NIA/Pendrive/mobile phone/mobile phone/Q1/All Data/files/Audio/5_773563922572640328
P75	12-01-2017	Portion of 161 statement of PW47 Mohammed Ali
P76	27-04-2016	Attested copy Customer Application form of Aircel Mob No.7373734622. In the name of Acinus Pharmaceuticals Pvt Ltd.

P77	27-03-2017	Portion of 161 statement of PW48 Haris Ali
P78	30-11-2013	Registration Certificate of KL-18-L9348 – Honda Activa Scooter
P79	08-10-2016	Seizure Mahazar for the seizure of Honda Activa Scooter KL-18-L-9348
P80	25-03-2016	Copy of Rent agreement between Jasim and Vijayalakshmi.
P81	09-10-2016	Search list for the items seized from the Flat No 303 at N.S. Palya.
P81(a)	09-10-2016	Scene Mahazar of the Room searched (Flat No.303)
P81(b)	09-10-2016	Advance search intimation for the search of Room No.303, 3rd Floor, H.No.149, BTM 2 nd stage, 4 th main, 2nd cross, Near Vibjyor High school, N.S.Palya, Bangalore - 76
P82	21-11-2016	Search list of the search of the house of Shajeer Mangalassery.
P83	24-11-2016	Seizure Mahazar for the seizure of Viva Mobile phone.
P84	24-11-2016	Mahazar for (extracting messages from Viva phone (MO60) to CD(MO61))the Seizure of CD(MO61)
P85	06-10-2016	Search list for the search conducted in the office of Thejus Daily.
P86	12-10-2016	Seizure Mahazar for the seizure of Hard disc from the office of the Thejus Daily.
P87	12-10-2016	Observation Mahazar.
P88	09-02-2017	Monthly Status report(Basic work Duration) Statement from 25-08-2016 to 24-09-2016 of Safvan at Intermedia Publishing Ltd, Media city, Nallalam.
P89	05-10-2016	Extraction proceedings of E-mail and Social Media account of Safvan.
P90	06-10-2016	Extraction proceedings of E-mail and Social Media account of Jasim.
P91	19-02-2017	Extraction proceedings of E-mail and Social Media account of Moinudeen.
P91(a)		Photograph identified by Sajita in page No 23 of P91 document.
P91(b)		Photograph identified by Sajita in page No 23 of P91 document.

- P91(c) Photograph identified by Sajita in page No 23 of P91 document.
- P91(d) Relevant portion of confession of A8 in the Ext..P91 Extraction proceedings (I have the followingI can show the contents.)
- P92 21-02-2017 Extraction proceedings of E-mail and Social Media account of Mujeeb Rahman.
- P92(a) Page No 87 of Extraction proceedings of E-mail and Social Media account of Mujeeb Rahman.
- P92(b) Page No. 88 of Extraction proceedings of E-mail and Social Media account of Mujeeb Rahman.
- P92(c) Page No. 89 of Extraction proceedings of E-mail and Social Media account of Mujeeb Rahman.
- P93 09-02-2017 Portion of 161 statement of PW63 Abdulla.
- P93(a) 09-02-2017 Portion of 161 statement of PW63 Abdulla.
- P94 (STP) 13-06-2016 Attested copy of Customer Application Form of Pre-paid connection of Idea Cellular Ltd. Of Jasim Mobile No.7736232312
- P94(a) 28-09-2015 Attested copy of Customer Application Form of Pre-paid connection of Idea Cellular Ltd. Of Jasim Mobile No.7025293747
- P94(b) 28-09-2015 Attested copy of Customer Application Form of Pre-paid connection of Idea Cellular Ltd. Of Jasim of mobile No7025293767
- P95 Document with path No.Evd12/Tablet/Q1/Report in CSG No-2016-11 NIA/DISK01 (page No.481) in Ext.. P121 Hard Disk in the group Bab al noor.
- P95(a) Document with Path No.Evd02/Mobilephone/Q1/Chats/ Telegram-Chat-53 In Ext. P121 Hard disk.
- P95(b) Chat No.75 in babalnoor group in Ext..P121 Hard disk.
- P96 Photograph of Manseed with Path No. Evd/01/memory card/Q1/pictures/pictures _deleted/20160722_112809 in CSG No-2016-11NIA/Disk01 in P121 Hard disk.
- P97 22-11-2016 Seizure Mahazar for the items seized from Thualhath
- P98 22-11-2016 Extraction proceedings of the extraction of E.mails/face book accounts of Thualhath.

P99 (series)		Voice clips of Manseed in the Hard disc (P121) bearing path No.DISK01/(F)/Evd12/Tablet/Q1/ Files/Audio and Evs01/ Mobile phone/Q1/Files/ 2016+-09-08-18-05-22-300-Valley.mp3
P100	22-02-2017	164 statement of PW64 Thualhath
P101	21-02-2017	Relevant portion of 161 statement of PW65 Sajida
P101(a)	21-02-2017	Relevant portion of 161 statement of PW65 Sajita
P102	17-02-2017	Seizure Mahazar for the seizure of items of PW76 Mujeeb Rahman.
P103	19-04-2016	Booking,Transaction and itinerary details regarding travel details of Sajeer Mangalassery and Moinudeen Parakkadavath produced by M/s. CleanTrip, Bangalore with 65B certificate.
P104	29-05-2017	Seizure mahazar for the seizure of travel details of Shajeer Mangalassery and Moinudeen parakkadavath produced by clear trip Pvt. Ltd.
P105	14-10-2016	Transaction details of Moinudeen and Swalih Mohammed through Western Union Money Transfer from western union services India Pvt. Ltd., Mumbai along with 65B certificate.
P106	01-01-2016	Call Detail Record(CDR) of Mobile No.7845728819 from 01-01-2016 to 02-10-2016 along with the attested copy of customer Application form with 65B certificate.
P107	01-10-2016	Order No.F.No.11011/29/2016-IS-IV of Government of India, Ministry of Home affairs issued by under secretary to Govt. Of India.
P108	21-03-2017	Sanction Order No.11011/29/2016-IS-IV issued by under secretary to Government of India.
P109	02-08-2017	Sanction Order No.11011/29/2016-IS-IV issued by Under Secretary to Govt. of India.
P110		Soft copy of image (Photograph) of Swalih Mohammed in Hard disc(P121) Document with path CSG. No.2016-11NIA/ disc01/Evd02/Mobilephone/Q1/Files/Image1457616865370.
P111		Soft copy of image(Photograph) of Ramshad in Hard disc- Document with path F:/CSG No.2016-11NIA/DISK01/Evd10/ Mobilephone/Q1/Files/Image-1469948064099.

- P112 Comment posted by Mohammed Faizal in Chat in the Hard disc (P121)with Path-CSG No.2016-11 NIA/DISK01/Evd02/ Mobile phone/Q1/files/Screenshots _2016-03-26-19-38-34.
- P113 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (page No.25 to 36)
- P113(a) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No.36 to38)
- P113(b) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No.39 to 40)
- P113(c) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No.43 to 44)
- P113(d) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No.45 to 47)
- P113(e) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No 47 to 55)
- P113(f) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No.56 to 59)
- P113(g) 17-06-2017 Relevant pages of 164 statement of PW76 Mujeeb Rahman (Page No.59 to 62)
- P114 01-03-2017 Extraction proceedings of email and face book accounts of CW4 Mohammed Fayas along with 65B certificate (22 sheets)
- P115 02-10-2016 Search Memorandum for the search of the house of Accused Manseed.
- P116 02-10-2016 Search Memorandum for the search of the house of Accused Ramshad.
- P117 Decoded Tower Location list Produced by Nodal officer Idea.
- P118 12-02-2019 Transaction details of Moinudeen Parakkadavath with sec. 65B certificate duly signed by the present Manager, ICICI, Bank Kochi.
- P119 The Pass word produced before court in sealed cover by NIA of face book account of A3.
- P120 28-03-2017 Report No CDAC/CSG/2016-11NIA/AR/MAR/2017.
- P121 Hard Disc contains the data's analyzed from the digital devices as per report P120.

- P121(a) Chat No.74 in the group play ground(formerly Kudumbam group)In Ext.121 Hard Disc.Evd2-mobile phone of A2.
- P121(a1) Chat No.13 in the group ` Play ground ` with Path No.CADC/ CSG/2016-11NIA/AR/MAR/2017 – Disk01/Evd12/Tablet/Q1/ Chats/Telegram/Chat in Ext.. P121 Hard Disk.
- P121(b) Chat No.62 relating to Kodaikkanal Attack in the group ` Taswib ` In Arabi language) in Ext..P121 Hard disk. Evd2-mobile phone of A2.
- P121(b1) Chat No.34 in the Group ` Taswib ` in P121 Hard disk. Evd3-mobile phone of A3.
- P121(b2) Chat No.45 in the group Taswib with Path No.CADC/ CSG/ 2016 -11NIA/AR/MAR/2017 – Disk01/Evd12/ Tablet/Q1/ Chats/Telegram/Chat in Ext.. P121 Hard Disk.
- P121(c) ChatNo.63 relating to ` Kozhikkode incident ` in the group Knowledge in Ext..121 Hard disk. Evd2-mobile phone of A2.
- P121(c1) Chat No.32 in the group ` Knowledge ` in P121 Hard Disk. Evd3-mobile phone of A3.
- P121(c2) Chat No.38 in the group Knowledge. No.CADC/ CSG/2016-11NIA/AR/MAR/2017 – Disk01/Evd04/ Mobile phone/LYF Mobile-LS-5016/Q1/Chats/ Telegram/Chat. (Mobile phone of A5)
- P121(c3) Chat No.44 in the group knowledge with path CDAC No. CADC/CSG/2016-11NIA/AR/MAR/2017 – Disk 01/Evd12/ Tablet/Q1/Chats/Telegram/Chat in Ext.. P121 Hard Disk.
- P121(d) series. Chat No.2, 3, 4, 6, 7, 9, 10, 18, 19, 29, 32, 46, 48, 55, 60, 61, 65, 66, with path CDAC/CSG/2016-11NIA/AR/MAR/2017 – Disk01/Evd02/ Mobile Phone/ Q1 chats/ Telegram/ chat in P121 hard disk -of A2 in face book messenger.
- P121(e) series Chat No. 15 and 16 of accused No.2 in face book messenger with path CDAC/CSG/2016-11NIA/ AR/ MAR/2017 – Disk01/ Evd02/ Mobile Phone/ Q1 chats/ face book messenger/chat in P121 hard disk.

P121(f) series		Data retrieved from the mobile phone (MO4) of accused No3 with path CDAC/CSG/2016-11NIA/AR/MAR/2017 – Disk01/ Evd03/ Mobile Phone/ Samsung _ SM- G 7102/Q1/Chats/ Telegram/ chat -9, 12, 24, 26, 40 and 59 in P121 hard disk.
P121(g)		Photo in Path CDAC/CSG/2016-11NIA/AR/MAR/ 2017 – Disk01/Evd02/ Mobile Phone/ Samsung _ SM- G 7102/Q1/ with number files/image/ 5_988796557820166158.
P121(h)		Data in the contacts in the mobile phone (MO5) of accused No3 with path CDAC/CSG/2016-11NIA/AR/MAR/2017 – Disk01/Evd03/ Mobile Phone/ Samsung _ SM- GT-6312 /Q1/Reports/ Contacts in Ext.121 Hard disk.
P121(i) series.		Chat received from the MO15 mobile phone of A5 with Path No.CADC/CSG/2016-11NIA/AR/MAR/ 2017 – Disk01/Evd04/ Mobile phone//LYF Mobile-LS-5016/Q1/Chats/Telegram/ Chat 42, 43, 71 and 77 in Ext. P121 Hard disk.
P121(j) series		Data retrieved from the mobile phone of A6 (Chats) with Path No. CADC/CSG/2016-11NIA/AR/MAR/ 2017 – Disk01/Evd05/ Mobile phone/Q1/Chats/ Telegram/Chat 231,236 ,241.
P121(k) series		Chat with Mansi Buraaq by A6 in Face book messenger with Path No.CADC/CSG/2016-11NIA/ AR/MAR/2017 – Disk01/ Evd05/ Mobile phone/ Q1/Chats/Telegram/Chat 223
P121(l) series		Chat No.21, 27, 28, 33, 34, 37, 38, 40, 41, 43, 50, 51, 58, 60, 61, 63, 65, 66, 67, 68 and 70 retrieved from MO21 Tablet of A4 with Path No.CADC/ CSG/2016-11NIA/AR/MAR/2017 – Disk01/Evd12/ Tablet/Q1/Chats/Telegram/Chat in Ext.. P121 Hard Disk.
P122	28-03-2017	Report No CDAC/CSG/2016-12NIA/AR/MAR/ 2017./
P123 series		2 Nos pen drives contains the data's analyzed from the digital devices as per report P122.
P124	28-03-2017	Report No CDAC/CSG/2016-12CNIA/AR/MAR/ 2017.
P125		Pen drive contains the datas analyzed from the digital devices as per report P124.

P125(a) series		Chat No. 18 and 22 in the data retrieved from the mobile of PW3(Mehrunnisa) with Path No. USBSTORE01/Evd01/Mobile phone/Q1/Chats/Facebook messenger/chat in Ext.P125 Pen drive
P126	28-03-2017	Report No CDAC/CSG/2016-15ANIA/AR/MAR/ 2017.
P127		Hard disc contains the data analyzed from the digital devices as per report P126.
P128	28-03-2017	Report No CDAC/CSG/2016-15BNIA/AR/MAR/ 2017.
P129		Hard disc contains the datas analysed from the Hard disc as per report P128
P130	28-03-2017	Report No CDAC/CSG/2016-15DNIA/AR/MAR/ 2017.
P131		Hard disc contains the datas analysed from the digital devices as per report P130.
P132	28-03-2017	Report No CDAC/CSG/2016-05BNIA/AR/MAR/ 2017.
P133		Hard disc contains the datas analysed from the digital devices as per report P132.
P134	12-10-2018	Report No CDAC/CSG/2016-05CNIA/AR/OCT/2018.
P135		Hard disc contains the datas analysed from the Motorola mobile phone SIM card and memory card as per report P134.
P135(a) Series		Chat No 60 in the data retrieved from the Mobile phone (MO 117) of PW75 in Ext..P 135 Hard disk with Path No. CSG No.2017-05C NIA DISK 01/Q1/ Evd10/Mobile phone/All _ data/Chats/Facebook messenger/Chat.
P136	28-03-2017	Report No CDAC/CSG/2016-05D NIA/AR/MAR/ 2017.
P137		Pen drive contains the data analysed from the digital devices as per report P136
P138	24-03-2017	Report No CDAC/CSG/2016-05ENIA/AR/MAR/2017.
P139		Hard disc contains the data analysed from the MO60 mobile phone, SIM card and memory card as per report P138.
P139(a) series		Chat No21 in the data retrieved from the mobile phone(MO 60) of PW55 with Path No. CDAC 2017-05E MIA DISK01/Evd06/Mobilephone/Q1/Chats/Telegram/Chat in Ext.. P 139 Hard Disk.
P140	09-08-2017	Report No CDAC/CSG/2017-06NIA/AR/AUG/2017.

- P141 Hard disc contains the data analysed from the digital devices as per report P140.
- P142 09-08-2017 Report No CDAC/CSG/2017-08NIA/AR/AUG/2017.
- P143 pen drive contains the data analysed from the Mobile phone and SIM card as per report P142.
- P144 12-10-2018 Report No CDAC/CSG/2017-13ANIA/AR/OCT/2018.
- P145 pen drive contains the data analysed from the CDs and DVDs as per report P144
- P146 13-02-2019 Passenger Manifesto of Flight NoFZ-241 along with 65B certificate produced by Fly dubai.
- P147 02-11-2016 Proceedings prepared in connection with recording of sample voice of A1 Manseed submitted by Bijoy Dickson Technical Asst. CDAC Thiruvananthapuram.
- P148 The Chat No.20 discussion in the group “ The Gate” in P 121 Hard disk. Evd12-tablet of A4.
- P148(a) The Chat No.73 in the group “ The Gate” in P 121 Hard disk. Evd2-mobile phone of A2.
- P148(b) Chat No.35 in the Group `The Gate` in P121 Hard disk. Evd3-mobile phone of A3.
- P149 The chat No.54 Discussion in the Group “ Darul Fikr” in P121 Hard Disk. Evd12-tablet of A4.
- P149(a) 18-09-2016 Chat in Darul Fikr group (Chat No. 54) on 18-09-2016. Relevant portion in Ext.121 Hard disk. Evd2-mobile phone of A2.
- P149(b) Chat No.51 in Darul Fikr group in Ext..121 Hard disk. Evd2-mobile phone of A2.
- P149(c) Chat No.36 in the Darul Fikr group in Ext..P 121 Hard Disk. Evd3-mobile phone of A3.
- P149(d) Chat No. 49 in the group Darul fikr with Path No.CADC/CSG/ 2016-11NIA/AR/MAR/2017 – Disk01/Evd04/Mobile phone/ LYF Mobile-LS-5016/Q1/Chats/Telegram/Chat in P121 Hard Disk. (Mobile of A5)
- P150 series Chat discussion found in Evd12/Tablet/Q1/Chats/Telegram with number 34, 37, 41 and 43 in P121 Hard disk

P151 series		Chat discussion found in Evd02/Mobile phone/Q1/ Chats/ Telegram with number 47,57 and 59 in Ext.P121 Hard Disk.
P152 series		Voice clips ending with Number 5296, 5297, 5300, 5301, 5430, 5431 and 5447 with Path No.DISK01/Evd03/Mobile phone/Samsung_SM-G7102/Q1/Chats/Telegram/ Attachments 12 in Ext.P121 Hard Disk.
P153		The photograph of PW100 in the Video with Path No.DISK01/ Evd01/Memory card/Q1/Video/ _ Deleted/20160722_163958 in Ext.P121 Hard Disk.
P154 series		The photograph of Manseed in the video with Path No.DISK01 /Evd01/Memory Card/Q1/Video/ Video_Normal/20141213_203119 and20141228_214325 in Ext.P121 Hard Disk.
P155	02-10-2016	The chat discussion with A4 in WhatsApp with path No.Evd10/Mobilephone/Q1/Chat/WhatsApp (chat No.111) in Ext.P121 Hard Disk.
P156		Boarding Pass of Jet Airways in the name of Abdul Salam Mohammed from Doha to Kochi
P157	23-10-2016	Seizure Mahazar for the seizure of items from Mohammed Fayas (PW100).
P158		Print out of Screen shots of the pages of the Extracted proceeding accounts of PW100 Mohammed Fayas.
P159		A PDF document with Path No.Evd03/memory card/memory Card-4GB/Q7/Documents_Deleted/ 1_562884772997628831 (posted in the Ansarul group) In Ext. P121 Hard Disk.
P160	05-12-2016	The relevant Portion of 164 statement given by Mohammed Fayas
P161	23-10-2018	Report No.B1-4986/FSL/2017 Submitted by Rahila.R., Asst.Director (Physics), F.S.L. Thiruvananthapuram.
P162	02-10-2016	Advance search Memo
P163	12-10-2016	Extract of voluntary Confession statement of Safvan
P163(a)	12-10-2016	Extract of voluntary Confession statement of Safvan
P164	15-02-2017	Arrest Memo of Moinudheen Parakkadavath.
P164(a)	15-02-2017	Personal search Memo of Moinudheen

- P165 13-02-2017 Boarding Pass of Etihad Airways of Flight No.EY218.
- P166 01-10-2016 First Information Report in RC 05/2016/NIA/KOC
- P167 03-10-2016 Report filed to incorporate the name and address of Accused No5 and 6 in the list of accused.
- P168 09-03-2018 Report No.CFSL(H)/622/DOC/380/CH-95/2017 of CFSL Hyderabad.
- P169 01-02-2018 Report No.CFSL(H)/62(A)/DOC/380(A)/CH-95(A)/2017 of CFSL Hyderabad.
- P170 28-01-2017 Report filed to incorporate the name and address of Accused No7 and 8 in the list of accused.
- P171 27-02-2017 Report filed to incorporate the name and address of the Approver (Mujeeb Rahman) (PW76) in the list of accused.
- P172 19-09-2016 Malayala Manorama Daily.
- P173 04-10-2016 Property list-I for the items seized from A1 at Kanakamala on 02-10-2016.
- P173(a) 04-10-2016 Property list – II for the items seized from the house of A3 Rashid Ali on 02-10-2016.
- P173(b) 04-10-2016 Property list – II for the items seized from the rented house of A2 Swalih Mohammed at Kottivakkam, Chennai on 02-10-2016.
- P173(c) 24-10-2016 Property list for the items seized from Mohammed Fayaz (PW 100) on 23-10-2016 at CIAL, Nedumbassery.
- P173(d) 13-10-2016 Property list for the items seized from the flat of Jasim (A6), at Bangalore on 09-10-2016.
- P173(e) 31-10-2016 Property list – II for the items as per Seizure Mahazar dated 28-10-21016, produced by Smt.Sofiya.P.B. (mother of PW100 Mohammed Fayas)
- P173(f) 23-11-2016 Property list for the items seized from PW64 Thaulhath on 22-11-2016.
- P173(g) 13-10-2016 Property list for the Hard disc seized from the office of Thejus daily on 12-10-2016.
- P173(h) 06-10-2016 Property list for HUAWEI mobile phone seized from the sister of A1 on 06-10-2016.
- P173(i) 01-03-2017 Property list for the items seized from PW64 Thaulhath on 22-11-2016.

- P173(j) 18-02-2017 Property list for the items seized from A8 and PW76 on 15-2-17 and 17-02-2017 as per personal search memo at NIA office New Delhi.
- P173(k) 07-10-2016 Property list for the seizure of extraction of social media contents of A3 Rashid Ali on 06-10-2016.
- P173(l) 13-10-2016 Property list for the seizure of the extraction of Email and social media accounts contents of A2,A4,A5 and A6 on 05-10-2016.
- P173(m) 18-10-2016 Property list for the seizure of the extraction of Gmail and Face book accounts contents of Manseed (A1)
- P173(n) 03-11-2016 Property list for the seizure of items produced by Mohammed Faizal of Tilak Nagar, Bangalore on 02-11-2016.
- P173(o) 25-11-2016 Property list for the seizure of items produced by Shebinas (brother of Shajeer Mangalassery) on 24-11-2016 at NIA office Kochi.
- P173(p) 20-02-2017 Property list for the seizure of CD containing Gmail and facebook accounts extraction of accused(A8) Moinudheen P.K.
- P174 04-10-2016 Forwarding Note dated 01-10-2016 for forwarding MOs seized from A1 at Kanakamala on 02-10-2016.
- P174(a) 20-10-2016 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(b) 14-10-2016 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(c) 25-10-2016 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(d) 07-11-2016 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(e) 23-01-2017 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(f) 20-10-2016 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(g) 14-10-2016 Forwarding Note for forwarding MOs to CDAC, Trivandrum.
- P174(h) 06-03-2017 Forwarding Note for forwarding MOs to CDAC, Trivandrum.

P174(i)	22-02-2017	Forwarding Note for forwarding MOs to CDAC, Trivandrum.
P174(j)	09-08-2017	Forwarding Note for forwarding MOs to CDAC, Trivandrum.
P174(k)	12-4-2017	Forwarding Note for forwarding MOs to CDAC, Trivandrum.

Defence Exhibits:-

D1	06-02-2017	Portion of 161 statement of PW5
D2	12-08-2016	Two entries in the statement of A/c(P32).
D3	07-11-2016	Relevant portion of 161 statement of PW21
D4	26-12-2016	Relevant portion of 161 statement of Nuhaif(CW13)
D5	09-10-2016	Relevant portion of 161 statement of PW54

Prosecution Witnesses:-

PW1	Yaspal Sing Takur, Retd. DYSP, NIA new Delhi.
PW2	C. B. Prasun
PW3	Mehrunnisa
PW4	R. Anil Kumar
PW5	Balan K. P.
PW6	Anandan
PW7	B. T. Muhammed Basheer
PW8	Ratheesh Kumar
PW9	Mehamood
PW10	Rohitkumar
PW11	Sajeevendran
PW12	Mohammed Fazil
PW13	Mohammed Fayas
PW14	P. B. Mohammed Suneer
PW15	Mukundan
PW16	Suresh P. K.

PW17	Navas. P.
PW18	Arjun Krishnan
PW19	M. F. Jose
PW20	Basheer P. M.
PW21	Dr.Ameen Rashid V. C.
PW22	S. Madhavan, Dy. Tahsildar Chennai.
PW23	Sathish Ganesan
PW24	Ramla Begum (Hostile)
PW25	Jinsina (Hostile)
PW26	Nixon G. Manayil
PW27	Mohammed Javid Nazeem
PW28	V. Senthil Kumar, Inspector/NIA/Kochi.
PW29	Nuhaif
PW30	J. D. Babu
PW31	Navas (Hostile)
PW32	Dr.Inderjit P. K.
PW33	Sinoj Baby
PW34	Pappu Prasad Gupta, Inspector, Central Excise
PW35	K. G. Sajan, ASI coimbatore.
PW36	Abu Tahir (Hostile)
PW37	Nivas Khan
PW38	Y. Sheik Safiyullah
PW39	Mohanasundari
PW40	Faisal
PW41	Ramla (Hostile)
PW42	Shahina N. K. (Hostile)
PW43	P. H. Shajahan
PW44	Dideesh
PW45	Chithra Vasu
PW46	Rajesh S. D. Asst. Ex. Engineer, Kochi Corporation.
PW47	Mohammed Ali M. Z. (Hostile)
PW48	Haris Ali (Hostile)

PW49	V. V. Madhusudanan, Joint RTO
PW50	Bibin A. G., S.I. of Police.
PW51	Raghavendra Ellur
PW52	Nagaraja Naidu
PW53	Vjayalakshmi
PW54	Dhalram Choudhary
PW55	Shebinas M.
PW56	Sasidharan P., Dy. Tahsildar
PW57	Manoj K. R., Spl. Village Officer
PW58	Riyas Chakeri, S.I. of Police
PW59	K. Sasidharan
PW60	Noushad C. B.
PW61	Alan S. Pillai
PW62	Roopesh
PW63	Abdulla
PW64	Thualhath E. V.
PW65	Sajida
PW66	Akhil Ramesh, Constable/NIA/New Delhi
PW67	Ananda L.
PW68	Jagjith
PW69	Karicheri Shaseendran
PW70	Marshal D. Cunha.
PW71	N. S. Bisat., Under Secretary, Ministry of Home Affairs
PW72	Edward Raja
PW73	L. R. Kumar IPS, S.P/NIA/Hydrebad
PW74	K. Vasudevan
PW75	Mohammed Faizal
PW76	Mujeeb Rahman
PW77	K. Sathyamurthy
PW78	Shahin Komath
PW79	Biju
PW80	Binoy Joseph

PW81	Bijith E. C.
PW82	Salma Mahajabeen
PW83	Nayeem M., Police Inspector/ NIA/ Hyderabad
PW84	P. Vikraman, Dy.SP/NIA/Kochi
PW85	Ashok K. S.
PW86	Surya
PW87	P. Sajimon, Inspector/NIA/Kochi
PW88	Ramdas Nair
PW89	C. Radhakrishna Pillai. Dy.SP/NIA/Kochi
PW90	K. Vijayakumar, Inspector/NIA/Kochi
PW91	Mujeeb
PW92	Nabeel Koya, Examiner, Cyber Security Group C-DAC
PW93	Sujay Gopalakrishnan
PW94	Bijoy Dixon, Technical Assistant, C-DAC
PW95	Kumar
PW96	Mahesh Kumar
PW97	Radhakrishnan
PW98	Manokaran
PW99	Rajathy Sivakumar
PW100	Mohammed Fayas
PW101	Rahila. R, Assistant Director, FSL, Trivandrum
PW102	Abdul Khader, Dy.SP/NIA/Kochi
P103	A. P. Shoukkathali (Investigating Officer) Additional SP, NIA/Kochi

Defence Witness:- Nil

Material Objects:-

MO1	Black Mobile phone (Samsung-Spigen) IMEI No.352558068271486 of Jasim.
MO1(a)	SIM Card of Idea
MO1(b)	Memory card Sand Disk 32 GB

MO2	Key of Honda Activa Scooter.
MO3	Federal Bank Visa Card(Ending with Sr.No6240)
MO4	Samsung Mobile phone of Rashid Ali (IMEI No. Ending with Nos.3176 and 3174)
MO4(a)	SIM card of Vodafone
MO4(b)	Idea 4G Nano SIM Card.
MO5	Samsung White Mobile phone of Rashid Ali. (IMEI No. Ending with Nos.4472 and 4470)
MO5(a)	Aircel SIM card.
MO5(b)	Tata Docomo SIM Card
MO5(c)	Memory card sand disk 16 GB
MO5(d)	Micro SD Card 4GB
MO6	Two wheeler Parking Slip
MO7	Key of TVS Scooter
MO8	Mobile phone-Samsung (white colour) of Manseed (IMEI No.5018)
MO8(a)	Airtel SIM card
MO8(b)	4GB Micro SD Memory card.
MO9	Raiban Glass of Manseed
MO10	Black Purse with 10 cards (Printed letter As `woods` .
MO10(a)	State Bank Visa Debit card with number 4591640000971515 in the name of Manseed
MO10(b)	Shopping Card Named Shukran having number 160000221640015.
MO10(c)	Transportation card Named Karwa Smart Card White and blue colour having number 01007-50109-3.
MO10(d)	Card with printed words `eidcharity.net` with prints in foreign language.
MO10(e)	State of Qatar residency permit with ID Number 28635607533 in the name of Manseed Muhamood Kunnummal.
MO10(f)	Visiting card of Atif Ali Khan, Senior HR officer, Quality Austria.
MO10(g)	Visiting card of Kallada Tours and Travels
MO10(h)	Shopping Card L.G. Jubo Digits No. 20160010085

- MO10(i) Visa Electron Card of QIB having No. 4143931508727415 in the name of Manseed
- MO10(j) Visa Debit card of QIIB having No. 4173916475360038 in the name of Manseed.
- MO10(k) Photocopy of one page with printing in Foreign language and seal of Ministry of Foreign affairs, State of Qatar dated 10-03-2016 with number2016001046367.
- MO10(l) One light green paper slip with writing in Malayalam `Nechipuzhoor P.O, Pala, Kottayam 9846863344Sibi.
- MO10(m) Receipt of Currency purchased /Sales from Alzaman Exchange Lulu dated 29-09-2016 with reference Number 00205429091600087 for INR 10,000/-
- MO10(n) Remittance receipt of Alzamam exchange Lulu dated 29-09-2016 with No.0022909101193 in the name of Maria Grace De Gumza Sumampog
- MO11 LETV Mobile phone of Swalih mohammed
- MO11(a) Idea 4G Microm SIM Card ending with No.1068.
- MO11(b) Airtel 4G Nano SIM card. Ending with No.5295U
- MO12 Election ID card of Swalih Mohammed.
- MO13 Pan card of Swalih Mohammed.
- MO14 Railway Ticket
- MO14(a) Railway Ticket
- MO15 Mobile phone-LYF of Safvan (IMEI No. Ending with Nos.3083 and 3081)
- MO15(a) 16GB Micro memory card of Samsung.
- MO15(b) 2GB Micro SD memory card
- MO15(c) BSNL SIM Card ending with No.0880.
- MO15(d) Jio SIM card ending with No.27398
- MO16 Samsung Mobile Phone of Safvan (IMEI No. Ending with Nos.1584 and 1582)
- MO17 Vehicle Pass(Popular Front)
- MO18 Toshiba 8 GB Pen drive (in broken condition)
- MO19 Index Mobile (IMEI No. Ending with Nos.6623 and 6631)
- MO19(a) Steel Compus
- MO19(b) Blue Bag

MO19(c)	Red Bag
MO19(d)	Ear phone
MO19(e)	USB Cable
MO19(f)	T – Shirt
MO19(g)	Track Suit
MO20	Mathrubhumi News paper dated 02-10-2016
MO21	Samsung Tab(model CE0168)
MO22	Mobile Phone (Huawei) of Mehrunnisa (IMEI No. Ending with Nos.0634 and 2169)
MO23	Nokia phone ceased from the house of Manseed.(IMEI No. Ending with Nos.4004 and 0032)
MO24	Mobile phone Huawei (IMEI No. Ending with Nos.8279)
MO24(a)	SIM card of MO24 Mobile phone.(Huawei)
MO25	Net setter
MO26	Envelope
MO27	S.D. Card (Micro SD) Adapter (Transend)
MO27(a)	S.D. Card(Sand disk)
MO28	Broken SIM card
MO29	Tamil Printed Stamp paper of Rs.20/-
MO29(a)	Photo copy of Pan card of Swalih Mohammed.
Mo29(b)	Photocopy of Adhar Card of Swalih Mohammed
MO30	Touch Pad -Touch Mate- (Hellow pad Model T.M.MID790Q.
MO31	Samsung Mobile phone(Duos) Model.SM-G-313HL.(IMEI No. Ending with Nos.4373 and 4379)
MO32	Internal Hard disc(Samsung) Model No.HD161GJ.HDDP/N. S/NS14DJ9BZ205733.
MO33	Customer Receipt dated27-09-2016 MTCN749322-4046 to receive money(Western Union).
MO33(a)	Money receiving form (Western Union) dated 27.09.2016 for Rs.18000/- with customer signature.
MO33(b)	I.D Proof (Photocopy of Election ID card bearing No. ALK 0323253 of Swalih Mohammed).
MO34	LAP TOP EMC UTL seized from PW36 Abu Tahir

- MO35 Treatment details No.BMH/DMS/80/17 dated 13-02-2017 of A4 Ramshad , issued from Baby memorial Hospital Kozhikkode.
- MO36 Pan card NoBXNPR5806C of Rashid Ali
- MO36(a) Adhar Card No.5149 9261 3592 of Rashid Ali
- MO36(b) Election ID Card No RTG1877810 of Rashid Ali
- MO36(c) Visa Card of State Bank of Rashid Ali.
- MO36(d) Rupay Card of Federal Bank of Rashid Ali.
- MO37 Diary of 2015.
- MO37(a) Translated copy of MO37 (Diary)
- MO37(b) Certified copy of MO37 (Diary)
- MO38 Form No 49A for filing Income Tax.
- MO39 Booklet printed ``JIHAD FI SABILILLAH``
- MO40 Spiral binded Book “ Role of Women in fighting the Enemies”
- MO41 Booklet “ 44 ways of supporting Jihad”
- MO42 Booklet “ Flag of Jihad”(7 conditions of shahadath
- MO43 Booklets “ Types of Kufr”
- MO44 Booklet “ LIE DEBUNKING”
- MO45 Booklet “ Vijayathinte Vathil ”
- MO46 Pamphlets with Title Flag of Jihad. (Siriyan Viplavavum Raktha chorichilukalum)
- MO46(a) Palmphlets with Title Flag of Jihad.(Khalifayudeyum Khilaphathinteyum shariya Nibandanakal)
- MO46(b) Palmphlets with Title Flag of Jihad. (Khilaphathine thirichu vilikkunnavar arrokke)
- MO47 LAP TOP (HP).Sr.No.0650115090159708. Seized from father of A3 (PW44)
- MO48 PEN DRIVE. Seized from father of A3 (PW44)
- MO49 Poster (Peace and Humanity Campaign)
- MO50 Zimmanama(Kychit) dated 22-03-2017
- MO50(a) Photocopy Page No.28 of Register of Kochi Corporation.
- MO50(b) Letter for sanction by Mohammed Basheer.

MO50(c)	Office Note dated 1-9-2016. in the register of Kochi Corporation
MO50(d)	Sanction Letter dated 01-09-2019
MO51	CD with Cover containing telegram messages and screen shots extracted from the mobile phone of PW55 Shebinas
MO52	CD of Extraction of E-mail and social media account of Rashid Ali
MO53	Mobile phone (Samsung)
MO53(a)	SIM card.
MO54	Honda Activa Scooter Reg No.KL-18-L-9348.
MO55	LAP TOP Model Dell Inspiron-5520 9220433185
MO56	SIM Card- Idea
MO56(a)	SIM Card -HTC
MO57	Yellow Stick Slip
MO57(a)	Yellow Stick Slip
MO57(b)	Yellow Stick Slip
MO58	Indian Passport No.H 9688193 issued on 08-04-2010 of Jasim.
MO59	Election ID Card of Shajeer No.DSL1698273
MO60	Mobilephone(Vivo)IMEI No. ending with 5131 and 5123.
MO60(a)	Airtel SIM Card
MO60(b)	Idea SIM Card
MO60(c)	Memory Card.
MO61	CD seized as per P84 Mahazar.(Containing extraction of MO60 mobile phone.
MO62	Executive Diary for the year 2017.
MO62(a)	Driving Liscence No55/13587/2015 dated 05-10-2015 of Safvan.
MO63	Hard Disk(Seagate)Barracuda-7200-12 of 500 GB seized from Thejus office.
MO64	DVD of extraction proceeding of Email and Social Media account of Safvan.
MO64(a)	DVD of extraction proceeding of Email and Social Media account of Safvan

- MO64(b) DVD of extraction proceeding of Email and Social Media account of Safvan
- MO64(c) DVD of extraction proceeding of Email and Social Media account of Safvan
- MO64(d) DVD of extraction proceeding of Email and Social Media account of Safvan
- MO64(e) DVD of extraction proceeding of Email and Social Media account of Safvan.
- MO65 DVD of extraction proceeding of Email and Social Media account of Jasim.
- MO65(a) DVD of extraction proceeding of Email and Social Media account of Jasim.
- MO66 DVD of extraction proceeding of Email and Social Media account of Moinudeen.
- MO66(a) DVD of Extraction proceedings of Email and Social Media Accounts of Moinudeen.
- MO66(b) 22 voice clips of Moinudeen in MO66(a)CD with No.22, 43, series 103, 104, 118, 141, 146, 229, 326, 449, 823, 839, 869, 874, 889, 897, 898, 902, 911, 922, 934, 939, 940 and 941.
- MO67 DVD of extraction proceeding of Email and Social Media account of Mujeeb Rahman.
- MO67(a) DVD of extraction proceeding of Email and Social Media account of Mujeeb Rahman.
- MO67(b) DVD of extraction proceeding of Email and Social Media account of Mujeeb Rahman.
- MO67(c) DVD of extraction proceeding of Email and Social Media account of Mujeeb Rahman.
- MO67(d) DVD of extraction proceeding of Email and Social Media account of Mujeeb Rahman.
- MO68 Small pocket Diary of Thualhath.
- MO69 Working Visa of Mujeeb Rehman.
- MO70 Pocket Diary.
- MO70(a) Big diary (Note Book)
- MO71 External Hard Disc Samsung 1 TB capacity.
- MO71(a) External Hard disc Intel of 80 GB.

- MO72 Bank account statement of of Moinudeen Parakkadavath-NRE A/c No.100032354839 from 30-10-2014
- MO72(a) KYC application form of Moinudeen with copies of ID proofs.
- MO72(b) Sec. 65B certificate issued by Indusind Bank
- MO73 CDR of Mobile No9633681450 for the period 13-2016 to 2-10-2016.
- MO74 Original CAF of Mobile No9633681450 of Manseed.
- MO75 Cell ID decoded list of Tower(Airtel)with Sec 65B certificate.
- MO76 CDR of Mobile No.9884838935 issued in the name of Swalih Mohammed from 1-3-2016 to 02-10-2016.
- MO77 Original Customer Application Form of 9884838935 of Swalih Mohammed.
- MO78 CDR of Mobile No 9677856501 issued in the name of Mahesh kumar for the period from 05-07-2016 to 02-10-2016
- MO79 Original Customer Application Form of Mobile No.9677856501 in respect of Swalih Mohammed.
- MO80 CDR of Mobile No9562626662 with 65B certificate from 01-03-2016 to 02-10-2016
- MO81 Original customer Application Form of Mobile No. 9562626662 of Safvan.
- MO82 CDR of mobile No.9995716060 with Sec.65B Certificate of Ramshad for the period from 01-03-2016 to 02-10-2016.
- MO83 Original Customer Application Form of Mob.No.9995716060 of Ramshad.
- MO84 CDR of mobile No.7639872438 with Sec.65B Certificate of Ramshad for the period from 23-03-2016 to 02-10-2016.
- MO85 Attested copy of Customer application Form of Mob.No. 7639872438 in the name of Radhakrishnan.
- MO85(a) Original CAF of Radhakrishnan (MO85.)
- MO86 CDR of Mobile No.7868871642 for the period from 23-3-2016 to 02-10-2016. with 65B Certificate.
- MO87 Attested copy of Customer Application Form of Mob No.7868871642 in the name of Manokaran.

- MO87(a) Original CAF of Manokaran(MO87)
- MO88 CDR of Mobile No7639874158 from23-03-2016 to 02-10-2016.
- MO89 Attested copy of Customer Application Form of Rajathy.
- MO89(a) Original CAF of Rajathy (MO89)
- MO90 DVD of Extraction proceedings of Email and Facebook Accounts of Mohammed Fayas.
- MO90(a) DVD of Extraction proceedings of Email and Facebook Accounts of Mohammed Fayas.
- MO90(b) DVD of Extraction proceedings of Email and Facebook Accounts of Mohammed Fayas.
- MO91 Certified copy of Document with Path CSG.No.2016-11 NIA/DISK 01/Evd03/Mobile phone/Samsung-SM-G7102/Q1/Chats/Telegram/Attachments-6 (file Name Bagthadi)
- MO91(a) Translated copy of MO 91.
- MO92 Certified copy of Document with Path CSG.No.2016-11 NIA/DISK 01/Evd03/Mobile phone/Samsung-SM-G7102/Q1/Chats/Telegram/Attachments-6(file Name Adanirah)
- MO92(a) Translated copy of MO 92.
- MO93 Printout of document with Path CSG.No.2016-11 NIA/DISK o1/Evd03/Mobile phone/Samsung-SM-G7102/Q1/files/Document in the Hard Disc.(P121)
- MO94 Print out of Document with Path CSG.No.2016-11 NIA/DISK 01/Evd03/Mobile /---- ---(--)-- phone/Samsung-SM-G7102/Q1/Files/ Document in the Hard Disc.(P121)
- MO95 I phone with SIM card.
- MO96 Black Berry mobile phone with Memory card.
- MO97 series Indian currency Notes 19 Nos of Rs.500(19X500)
- MO98 CDR of mobile No.7373734622 from 03-04-2016 to 02-10-2016 in the name of Acinus Pharmaceuticals Pvt. Ltd.
- MO99 Attested copy of CDR of Mobile No.9087560170 for the period 01-03-2016 to 02-10-2016

- MO100 Copy of customer application form of Mobile No.9087560170 of Swalih Mohammed.
- MO100(a) Copy of ID card of Swalih Mohammed.
- MO100(b) Original Customer Application Form of Mob.No.9087560170 of Swalih Mohammed with ID proof.
- MO101 Attested copy of CDR of mobile No.7448411815 for the period from 01-03-2016 to 02-10-2016.
- MO102 Attested copy of Customer Application Form of Mob No.7448411815 of Ramachandran.
- MO102(a) Original Customer Application Form of Mob.No.7448411815 of Ramachandran with copy of ID proof
- MO103 Attested copy of CDR of Mobile No.9626387628 for the period from 02-03-2016 to 02-10-2016 in the name of Mohammed Ali along with Sec. 65B Certificate.
- MO104 Attested copy of Customer Application Form of mobile No. 9626387628 of Mohammed Ali.
- MO104(a) Original CAF of Mobile No.9626387628 of Mohammed Ali with copy of ID Proof.
- MO105 Attested copy of CDR of 7871986902 for the period from 01-03-2016 to 02-10-2016 of Balakrishnan.
- MO106 Attested copy of Customer application Form of Mob No.7871986902 in the name of Balakrishnan.
- MO106(a) Original CAF of Mob No.7871986092 with copy of ID proof
- MO107 Attested copy of CDR of Mobile No.7559846078 for the period 01-03-2016 to 02-10-2016.
- MO108 Attested copy of CAF of Mob No. 7559846078 in the name of Sofia.
- MO109 Attested copy of CDR of Mobile No.7736232312 for the period 01-03-2016 to 02-10-2016.
- MO110 Attested copy of CDR of Mobile No.7025293747for the period 01-03-2016 to 02-10-2016.
- MO111 Original Customer Application Form of Mobile No 7025293747 in the name of Jasim.

- MO112 Attested copy of CDR of Mobile No.7025293767for the period 01-03-2016 to 02-10-2016.
- MO113 Original Customer Application Form of Mobile No 7025293767 in the name of Jasim.
- MO114 series Samsung Mobile phone(GTI 9100) with vodafone SIM.
- MO115 series. Samsung Mobile phone (E7)with vodafone SIM.
- MO116 series Lenova Laptop with Hard Disc.
- MO117 series Motorola Mobile phone with SIM card and memory card.
- MO118 series I phone with SIM cards of A8.
- MO119 Samsung mobile phone of A8.
- MO120 Obi mobile phone of A8
- MO121 External Hard Disk A8
- MO122 4 pen drive and memory card of A8
- MO123 Huavai mobile phone with SIM card of Mujeeb Rahman. (PW76)
- MO124 Apple I pod of Mujeeb Rahman.(PW76)
- MO125 Sony voice Recorder
- MO126 CD contains the voice clips 2 Nos. of Manseed,
- MO127 Paper sheet with printing Omnicef-AZ Forte and writing in Tamil language.
- MO127(a) Photocopy with writing – list of articles in English in both page with heading in Tamil language one side of the paper starting in ` `side bag` and other side starting in `BACK BAG:(7 to 8 KG)` .
- MO127(b) Small hand book in Tamil language containing 16 pages – Bibliographical date mentioned in page No.2 -
- MO127(c) Small hand book in Tamil language containing 28 pages with printing in 26/11 and Tamil language in the first page, 3 paper cuttings photos of Times nation, The time of India in the back cover paged.(Pagd No. 13 to 18 missing.)
- MO127(d) Small hand book in Tamil language with Title `` Islam youth Association`` containing 13 pages(Front cover page partially torned on the bottom.

- MO127(e) Small hand book – black and white colour front cover page containing 48 pages in Tamil language with printing Level`s mobile shop 12/28, IA SMJ Parrys Plaza, 2nd line beach, Parrys, Chennai in the second page last.
- MO127(f) Small hand book in Tamil language containing 96 pages in front of cover page two swords crossing and one crown.
- MO127(g) Small hand book in Tamil language containing 24 pages with printing in front cover page Islamic book house, Coimbatore, amkasim@yahoo.com.
- MO127(h) Small hand book in Tamil language containing 32 pages with printing Islamic foundation trust, Chennai – AQL KA FAISLA(Tamil) in English in 2nd page.
- MO127(i) Small hand book in Tamil language containing 48 pages with seal of Hudha Book Center in the inner back cover page
- MO127(j) Small hand book in Tamil language containing 64 with printing Islamic foundation Trust, Chennai- Deen-e-Haq(tamil)etc. In English in 2nd page.
- MO127(k) Small hand book in Tamil language containing 144 pages With printing Ph.No. 044-25224821, Mobile9840977758 Email Sajith book centre@yahoo.com in the back cover page.
- MO127(l) Small hand book in Tamil language containing 48 pages -photo of camel and man in front cover page-with printing distributed by Islamic book Centre No.81etc in English in 2nd page last.
- MO127(m) Small hand book in Tamil language containing 48 pages - Black and white colour cover page.
- MO127(n) Small hand book in Tamil language containing 48 pages with printing Salamatika Rastha(Tamil) in English in front Cover page
- MO127(O) Small hand book in Tamil language containing 56 pages with printing Furqan Publication Trust Chennai in English in back cover page.
- MO127(p) Small hand book in Tamil language containing 32 pages with title` Elaingnanea vizhithozhu.

- MO127(q) Small hand book in Tamil language containing 32 pages with printing 'Khutba-e-Madras (Tamil)' on the front cover page.
- MO127(r) Small hand book in Tamil language containing 72 pages with printing Islamic Foundation Trust, Chennai – Political theory of Islam etc in English in 2nd page.
- MO127(s) Spiral bind booklet in Tamil language containing 30 pages with violet plastic cover sheet.
- MO127(t) Spiral bind booklet in Tamil language containing 15 pages with green plastic cover sheet.
- MO127(u) Booklet in Tamil, computer print out containing 11 pages.
- MO127(v) Booklet in Tamil, computer print out containing 41 pages.
- MO127(w) Register written in Tamil language containing 34 pages
- MO127(x) Spiral bind booklet in Malayalam language with title 'munnott' containing 60 pages with violet plastic cover sheet.
- MO127(y) Booklet in Malayalam with title 'Millath Ibrahim' containing 6 sheets, computer print out containing 11 pages.
- MO128 Passport of Moinudeen Parakkadavath No.H5498006
- MO129 Boarding Pass of Etihad Airways of Flight No. EY218 from Abu Dhabi to Delhi
- MO129(a) State Bank Cash plus card No.5049937064500793878
- MO129(b) Indusind Bank VISA Platinum Debit Card No.4363932300299721
- MO129(c) Lulu international Exchange Card No.0100020161980305 in the name of Moinudheen
- MO129(d) Laminated copy of Indian Union Driving Licence No.60/3684/2011 of Moinudeen.
- MO129(e) Payroll Transaction Receipt dated.08-11-2016 of Al Rostamani International Exchange.
- MO129(f) Passport size colour photo of Moinudheen inside a paper cover of Bilquis Studio - 4Nos.
- MO130 Blue colour paper cutting Knife.
- MO130(a) Black colour USB charger.

MO130(b) Ear phone
MO130(c) Grey colour Track suit with marking NNN44
MO130(d) Black colour T shirt with marking Error
MO130(e) Musk perfume (small bottle) with golden colour
MO131 Visiting card of Shajeer Mangalassery

Sd/-
Judge

(By Order)

//True Copy//

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Comp. by :

Sheristadar